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**Supreme Court of the United States**  
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ALEXANDER L. STEVAS.  
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ESCAMBIA COUNTY, FLORIDA, *et al.*,  
*Appellants,*

v.

HENRY T. McMILLAN, *et al.*,  
*Appellees.*

ON APPEAL FROM THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX  
VOL. II — Pages 325-602

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## TESTIMONY OF JULIAN J. BANFELL

[594] JULIAN J. BANFELL, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. BLACKSHER:

Q. May it please the Court, this is Mr. Julian J. Banfell. He resides at 705 South "I" Street in Pensacola. He's fifty years old, born and raised in Pensacola. His present employment is that of a plumbing contractor. Is that correct, Mr. Banfell? A. That's true.

Q. Mr. Banfell, were you a member of the Escambia County, strike that, the Pensacola City Council during the period 1955 to '61? A. I was.

Q. Do you remember the election between Charlie Taite and Admiral Mason in 1955? [595] A. I remember the election, yes, sir.

Q. Would you describe to the Court what the reaction of the council members was to the Taite-Mason election.

MR. CATON: Your Honor, I would object to that. The best evidence of that would be the council minutes where it was discussed. He can ask him what his reaction was to it.

THE COURT: I don't see how you can get to this. If you show me some way to let you go this far, but you're asking him something about reactions and it's way out.

MR. BLACKSHER: Judge, I submit this is the kind of testimony that Rule 701 of the Rules of Evidence concerning lay testimony was intended to cover where it says that the witness is not testifying as an expert, his opinions or inferences are limited to those opinions and inferences which are (a) rationally based on the perception of the witness and, (b) helpful to a clear understanding of his testimony

or the determination of a fact in issue. To allow this witness, who was a participant, simply to describe his perceptions of what was going on —

THE COURT: He can certainly give us his own reaction and I didn't say he couldn't do that, but you're trying now to get him to give us, describe the [596] reactions of other to it when they may or may not have had reactions, or as a minimum he has to judge their reactions by something that he saw or heard. I just don't understand how you can carry it this far.

MR. BLACKSHER: Let me try it this way, please.

THE COURT: What was that, Rule 701 you were trying to bring it under?

MR. BLACKSHER: Yes, sir.

THE COURT: You can take him on his own reactions, what he went into. I realize we go pretty far in a case of this kind, sir, but I don't — have you got any case citing, have you got any case to show me in which this kind of testimony went in?

MR. BLACKSHER: I have not researched the case law under this new rule, no, Your Honor. I would have to provide that after we're given the opportunity to do that.

MR. LOTT: Your Honor, may I respond?

THE COURT: How's that?

MR. LOTT: The note to the rule indicates that the limitations of (a) and (b) is the first one is the first hand knowledge requirement and the second one discusses the problem when the witness is not able to express himself in language other than what his opinion is. The kind of opinion testimony that this kind of rule is contemplating here is something like were they [597] surprised or something like that.

THE COURT: I have that feeling too but I'm going to sustain the objection at the present time and if during the recess you can ask your witness to stay and come back, if during the recess you can give me further basis I'll consider it again, but that's my understanding of Rule 701 too, what Mr. Lott said about it.

Q. Let me try this question, may it please the Court. Mr. Banfell, was there shock on the council as a result of the Taite-Mason election?

MR. CATON: Your Honor, I'll object to that question as being leading.

THE COURT: The objection will be overruled at this point. We've got him so confined in asking questions, objection will be overruled.

Q. That means you may answer.

A. It was surprise and amazement that Mr. Taite had come very close to defeating Admiral Mason, yes, sir.

Q. Were you privy to conversations by council members and remarks by council members off the record concerning the nature of their surprise? What remarks were made concerning the election?

MR. CATON: Your Honor —

[598] THE COURT: Objection sustained.

A. Well, we —

THE COURT: the objection was sustained.

Q. You can't answer the question, Mr. Banfell. Mr. Banfell, was the surprise expressed by the council regarding this particular election related to the fact that Mr. Taite is a black person?

MR. CATON: Your Honor, now we're getting into the gist of it. He's testified that there was a reaction. Now he's asking him to testify as to what councilmen felt of thought, and that's hearsay.

THE COURT: I'm going to let him go this one step further. I'm going to let him answer that question.

Q. You may answer that question.

A. Would you rephrase the question, please? I didn't understand you.

Q. I'm saying, I'm asking you if the fact that Mr. Taite was black had to do with the surprise or shock that the council members expressed.

A. Oh, yes, surely.

Q. What did it have to do with it?

MR. CATON: I'll object that I think we're going too far there.

THE COURT: Objection sustained. I'm trying to stay with you as far as I can, Mr. Blacksher. You can ask [599] this man about his own reactions to it, and he can testify. He was a member of that council, wasn't he?

Q. All right, Mr. Banfell, what were your reactions to the Taite-Mason election?

A. This, I was elected at the same time, and —

THE COURT: You mean at the same time in this race?

A. Yes, 1955, and I didn't take office till June, which was a month or so away. My reaction was surprise and amazement. I had just gotten into politics. I was only twenty-seven years old at the time and I just didn't know what to make of it.



Q. Why were you surprised? A. Well, prior to that to my knowledge there had never been a black on the city council.

Q. Mr. Banfell, in 1956 did the council reapportion or redraw the boundary for Ward Two in which the Taite-Mason race had occurred? A. Under the charter as I remember it, we're going back a long ways, but under the charter as I remember it before each council election there had to be reapportionment as the population grew and shifted. And, yes, there was changes in boundaries and zones.

Q. Was there any effort in that 1956 apportionment to add white voters onto Ward Two?

[600] MR. CATON: Your Honor, I'll object to that as being leading and assuming a point in issue.

THE COURT: I'm going to let him answer. Objection overruled.

Q. You may answer that, Mr. Banfell.

A. Yes, I think that they didn't want a recurrence —

MR. CATON: Your Honor, I'll object to this testimony as not being responsive to the question and citing hearsay as to what they wanted.

MR. BLACKSHER: Your Honor, this gentleman was a member of the council

THE COURT: He was indeed a member of the council. He did go beyond the question but I'm going to let him answer.

Q. Go ahead, Mr. Banfell. You may answer. A. With the interruption, would you please ask me the question again.

Q. Yes, sir. My question was whether or not there was a conscious effort to increase the number of white voters in Ward Two by the redrawing of the boundaries in '56. A. Would Ward Two be Admiral Mason's ward?

Q. That's the one. A. Yes. There was a shifting of population and [601] redrawing of the boundaries which was, happened, as I said, before every election, and the boundaries were shifted.

THE COURT: Well, that's not exactly what he's trying to ask you, I think. You had the duty to reapportion each time to make the population equal?

A. Yes, sir.

THE COURT: As nearly as possible.

A. Yes, sir.

THE COURT: Now, was there any other consideration that entered into the addition of these two white, these two precincts, whatever they were, to Ward Two, other than that consideration? In other words was it motivated by racial considerations, if I need to ask it that way?

A. Well, they didn't want a recurrence of what had happened in 1955.

Q. What do you mean? What had happened?

A. Mr. Taite narrowly, coming very close to defeating Admiral Mason.

MR. CATON: Your Honor, I would move that that testimony be stricken as to again hearsay, what they wanted; number two, motives behind what they, whoever "they" is, wanted.

THE COURT: With deference to you, sir, I'm again going to overrule it. This gets into the heart of the area [602] I can appreciate your concern in this matter but we are

trying to get to the truth of this matter too and I was thinking you might even want to welcome such testimony as this to give you an opportunity to answer it. Your objection in any event is overruled and the motion is denied.

MR. CATON: Yes, sir, I understand we're trying to get to the truth. I just want it to come from the horse's mouth.

THE COURT: Well, it has come from something pretty close to it. He's a member of that commission, and you can bring others on to testify to the contrary, if that's what you're talking about. Let's go ahead with this. The objection is overruled.

Q. Mr. Banfell, I would like now to direct your attention to the events in 1959 leading up to passage of a special act in the Legislature that changed the five district elections in the city council to at-large elections. Do you recall the city, being part of the meetings between the city council members and the legislative delegation to discuss this? A. Yes, sir, we met with the legislative delegation.

Q. All right, sir, could you tell us what some of the reasons given by the council members to the [603] legislative delegation were for asking for that change?

MR. CATON: Your Honor, I don't know if it's necessary that I continue to object on this, asking for reasons that other council members gave, which is hearsay, and motivation also.

THE COURT: All right, sir, it would be hearsay but if he heard them giving the reasons to somebody else it wouldn't be quite that kind of hearsay. I'll overrule the objection.

Q. You may answer. A. The reasons for the Legislature —

Q. Changing the districts. A. Changing the law to at-large?

Q. Yes, sir. A. Well, it was felt that if everybody ran at-large then it wouldn't be this hassle for reapportionment so bad every time there was a council race coming up. And we, it made it, the council members running at-large, then it would make no difference other than population being equally divided within the five wards.

Q. Specifically, Mr. Banfell, was the legislative delegation told that one of that reasons for the apportionment would have been to prevent the opportunity of blacks from being elected to one of these districts seats, to one of these districts seats? [604] A. That I don't specifically recall. Here again we're gog back a long time, Your Honor.

THE COURT: I understand, sir. If you can't recall, just say so.

A. I can't recall.

THE COURT: If you can say so, say that.

A. But I believe that that was probably the —

MR. CATON: Your Honor, I'll object as to probably. If he can't recall, I think that's the extent of his answer.

THE COURT: If you can't recall, sir, either you recall something about it or you don't, sir.

A. Yes, I'd have to say that that was, that was the reason for changing this around where we would have everybody run at-large.

THE COURT: You mean the black feature of it was the reason for changing it around? You previously testified they didn't want to have these elections, this reapportionment, every two years.

A. Well, by charter we still had to have reapportionment regardless.

THE COURT: Well, your answer —

A. But you had to have, you had to have the, everybody run at-large.

THE COURT: That was what you were changing to?

[605] A. That's right.

THE COURT: And the reason for that change was what?

A. Was because then we wouldn't have this hassle of reapportioning to keep so many blacks in this ward and so many whites in that ward and keep the population in balance as to race.

THE COURT: All right, sir. Go ahead, Mr. Blacksher.

MR. BLACKSHER: That's all we have of this witness, Your Honor.

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## TESTIMONY OF ORELLIA BENJAMIN MARSHALL

[609] ORELLIA BENJAMIN MARSHALL, called as a witness by the plaintiffs, being first duly sworn testified as follows:

## DIRECT EXAMINATION

BY MR. MENEFEE

[610] May it please the Court, this is Mrs. Orellia Benjamin Marshall, 1803 East Scott. She's forty years old. She's married, with one child. She's been a lifelong resident of the Pensacola-Escambia County are. She graduated from Washington High School, Washington Junior College, Florida A & M. She is presently employed with the Escambia County School Board, where she teaches a sixth grade science class. She is a member of the Sixth Avenue Baptist Church, League of Women Voters and Democratic Party. In 1973 she was a candidate for the city council and at that time her name was Orellia Benjamin. Is that correct, Mrs. Marshall?

A. Yes.

THE COURT: The last name I didn't catch.

Q. Benjamin. Is that correct?

A. Yes, that's correct.

Q. Thank you. Mrs. Marshall, why did you decide to run for office in 1973 for the city council?

A. Because at that time I strongly felt, as I do now, we need black representation on the city council and also representation of a woman.

Q. Who was your opponent in that election?

A. Mr. Porky Paulk was my opponent.

Q. Why did you choose to run for that office as [611] opposed to perhaps the county commission or the school board?

A. Well, I did not have the revenues available for qualification for county commissioner and the revenues were more available for this position.

Q. And the school board?

A. The school board, I'm employed by the school board and I cannot run for a seat on the school board because I cannot be my own boss.

MR. RAY: I cannot hear the witness.

Q. Would you sit up in the chair.

THE COURT: See if you can speak a little louder for us, please. If you keep on having problem, move on over, Mr. Ray.

MR. RAY: Thank you. She said school board and it caught my attention. What was it?

A. I cannot run for a seat on the school board because I'm employed by the school board as a teacher.

MR. RAY: Thank you.

Q. Thank you. Mrs. Marshall, how did you assess your chance of winning this election when you announced your candidacy? A. At the time I decided to run I thought and I strongly felt that Pensacola was ready to accept a black skin in the political arena, and a woman, but as the [612] campaign ran on and it ended I realized I only had a dream, there was no chance of my being elected on the city council by the citizens of Pensacola.

Q. Is that assessment still true today? A. I strongly feel that today that if I run today I would not win with the system the way it is.

Q. Mrs. Marshall, did you campaign in both black and white communities. A. I did.

Q. And how did you go about that? A. Well, I took my campaign base to my church because the black churches are the heaviest, is the best way for us to go, and the only way we have to go in politics. These are the people that financed me. I did have whites working with me but they're what you call the liberal type whites in the South, you know, these type whites, and we campaigned every way possible we could but we had limited revenues and limited time because at the time I still had to stay on my job and campaign in the afternoons.

Q. Do you think you would run again under the present system? A. No, I would not.

Q. Both Mr. Hollice Williams and Dr. Donald Spence have at times in the past won election to the city [613] council. How do you account for this? A. They were appointed before they won any election. I call those men chosen men.

Q. Do you think that they are, they were able to be effective, vigorous spokesmen for the black community? A. Dr. Donald Spence, yes. Mr. Williams, I don't think he's a very influential man. I don't think he has really, I don't think he has the ability to be a spokesman, and the experience.

Q. Why do you differentiate with Dr. Spence? A. One reason, because of Dr. Spence's professional background in comparison to Mr. Williams. Mr. Williams doesn't have that professional background that Dr. Spence has, and that has a lot to do with it.

Q. During the course of your campaign did you find various issues raised in the black community that were of



concern to the citizens? A. The biggest concern during my campaign to the citizens was that the senior citizens and the young kids, recreational areas and things of this nature, and the governmental complex was hot at that time, revitalizing Pensacola. Those were the main issues we were taking at that time.

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## TESTIMONY OF F.L. HENDERSON

[624] F.L. HENDERSON, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. MENELEE:

May it please the Court, this is Mr. F.L. Henderson. He lives at 2608 North Seventh Avenue in Pensacola. He is forty-three years old. He's been a lifelong resident of Pensacola and the Escambia County area. He's presently employed at Eglin Air Force Base as [625] a water treatment analyst. He's married, with six children, graduated from Washington High School, attended Pensacola Junior College. He is past president of the local chapter of the Southern Christian Leadership Conference, served for ten years on the executive council of the NAACP, been active with the Young Democrats, member and president of the Jehovah Lutheran Church, and an officer in the Toastmasters International. In 1971 he was a candidate for the city council. Is that a correct statement, Mr. Henderson? A. Yes, sir, it is.

Q. Thank you, sir. Mr. Henderson, why did you decide to run for the city council in 1971? A. There were a number of reasons I decided to run. There were a number of issues at that time that we thought that the black community should address itself to and this was one of the reasons I ran. I felt that some of the items that were discussed during that particular period of time could only be addressed through someone from that particular group.

Q. Why did you choose to run for the city council as opposed to any other office such as county commission or school board? A. Well, at that time I was primarily concerned about the things that were happening within the [626] city, the flight of the white people from the city,

the decay in the downtown area, the problem with the housing area and other items at that particular time.

Q. Who was your opponent in that race, Mr. Henderson? A. Mr. John Frenkel, Jr. at that time.

Q. Okay, sir. When you announced your candidacy, did you think you had much chance of success? A. Not a great deal of chance of success but I thought that the issues had to be addressed at that time and I was hoping that maybe there was a possibility that I could arouse the conscience of the total community on the things that we were discussing as issues at that particular time.

Q. I see, sir. In organizing your campaign and soliciting funds what sources of funds did you receive from the black community? Who did you approach for financial help from the black community? A. Well, I approached the usual places. I approached the black business people, the churches, et cetera, also attempted to approach the white community as it relates to business and people that had participated in the election process in the past on helping candidates who they felt that had something to offer the city or as relates to being a sportsman.

[627] Did you have much success raising funds in the white community? A. Yes, I did. No, I didn't have any success raising any money. In fact my total revenue from the white community was zero.

Q. Did you have some success in the black community? A. I raised approximately seven hundred dollars.

Q. Do you consider that race was a major factor in your defeat? A. It was the primary factor in my defeat because as a result of the race a number of items came out that, how did I feel I was qualified to run for city council,

did I feel that I could represent white people in city government, et cetera.

Q. Do you feel that you were able to represent white people in city government, had you been elected? A. I wasn't concerned about representing any race or people. I was concerned about the issues in the city at that time. My primary concern was trying to upgrade the quality in the City of Pensacola. I felt that the expertise that I had gained through working in various organizations and being addressed to the problems of the city at that time in itself qualified me as a candidate.

Q. Okay sir. Would you seek election again [628] under the present system? A. No, I will not. There is no possible way I feel I could win under the present system. That's the reason I haven't run again.

Q. Do you think that's true for other black candidates? A. Very true. I think when you look at the total composition of the voting, of the people that vote, we only can look for about 20 percent of the total electors and with 20 percent we cannot win an election.

Q. Both Mr. Hollice Williams and Dr. Spence have at times won election to the city council. How do you account for that? A. Well, we must recognize that both of these gentlemen were appointed to this position and this is again an example of the power system, to select for the black community their leaders, the people that they want to represent them. These people were not originally elected by the constituents of this county or this city.

Q. During the time as an officer of the SCLC and the NAACP were those organizations active in putting forward various community issues to the city, county and school board? A. Yes, very much so.

## TESTIMONY OF ELMER JENKINS

[722] DIRECT EXAMINATION

BY MR. MENEFEE:

Q. Would you please state your name and address, please, sir? A. My name is Elmer Jenkins. I live at 1003 East Hayes Street, Pensacola, Florida.

Q. Okay, sir, when did you come to the Pensacola area, Mr. Jenkins? A. I came to Pensacola in 1959.

Q. Okay, sir, what's your educational background, please, sir? A. I received a BS with high honors from Florida A & M, Master's with honors at the University of Illinois, and I did my Ph.D. work at Florida State University.

Q. Have you yet received your Ph.D.? A. But I have yet to finish one controversial part of my dissertation and I should get it in June.

Q. Okay, sir, what is your present employment? A. I'm an associate professor of biology at Pensacola Junior College.

Q. Okay, sir. Mr. Jenkins, have you been active in any civic or religious organizations or black groups in Pensacola? A. Yes. I'm a trustee of Allen Chapel A.M.E., [723] African Methodist Episcopal Church.

THE COURT: Mr. Jenkins, perhaps if you will sit up, we do have a little acoustics problem. I know they fuss at me when I lean back.

A. Thank you. I've been on the board of directors of the March of Dimes. I've worked with the Boys Scouts through my church. I have worked in voter registration drives. I have worked in various political campaigns of people other than myself.

Q. Okay, sir. Mr. Jenkins, you have been a candidate for public office. Would you please tell us when and for what office you have run. A. In 1968 I ran for county commission in District Five. In 1974 I ran for a school board position in District Three, and for the same position again in 1976.

Q. Okay, sir. Do you remember your opponent in the 1968 county commission race? A. In 1968 I had three opponents: Mr. Armour, Mr. Gindl, and Mr. Watley.

Q. What was the outcome of the election, please, sir? A. I finished second in the primary, receiving about fourteen thousand votes, and I was in the runoff with Mr. Sam Armour.

[724] Q. And did you lose the runoff? A. Yes, I lost the runoff.

Q. Would you please tell us who your opponents were in the 1974 school board race.? A. In 1974 I had one opponent, Mr. Sanders.

Q. What was the outcome of that? A. I won that. I won that election by about eighteen hundred votes.

Q. Okay, sir. This was for the Democratic nomination? A. Yes.

THE COURT: You're talking about —

A. Yes, sir.

THE COURT: You're talking about now you won a primary election?

A. Yes, sir, 1974, sir.

THE COURT: That was the primary?

A. That was the primary, yes.

Q. And then in the general election who was your opponent and what was the result? A. In the general election my opponent was Mr. Richard Leeper, and I lost.

Q. Okay, sir. Mr. Leeper was the Republican?  
A. Yes, sir, he was.

Q. Okay, sir. Would you please tell us who [725] your opponent was in 1976.? A. In 1976 in an election that was set up, an election in Escambia County to add two districts to the school board, number six and seven, my opponents were Mr. Bailey, Mr. Forester, Mr. King, Mr. Lee, Mr. McGill and Mr. Southard.

Q. Okay, sir, what were the results of the election? A. In the primary I finished first by twenty-five hundred votes and I was in the runoff. I was in the runoff with Mr. Jim Bailey.

Q. Mr. Bailey? A. Bailey, yes.

Q. Okay, what happened in the runoff? A. I lost in the runoff.

Q. Do you remember the vote margin approximately?  
A. Yes. Mr. Bailey received about twenty-six thousand and I received around twenty-one thousand.

Q. Okay, sir. Thank you. Mr. Jenkins, why have you run for office? A. Well, back in 1966 when I first ran for office I waited until nearly the closing days of the qualifying period and at that time no other blacks had qualified for that particular election and I thought that blacks should become involved and participate and about [726] two days before the period ended there still were no blacks so I qualified so at least there would be one black in the political arena in 1968.

Q. Okay, sir. Did you have similar reasons for the 1974 and '76 races or are they different? A. Well, similar reasons. Again not too many blacks were participating. In 1974 in running for a school board position I thought that my chances for success might be enhanced since I was a college professor.

Q. I see, sir. Let me make sure I understand you. How did the college professor, this is your background in education? Is that why you — A. Yes, I thought my chances for a school board position might be better than my chances were for a county commissioner position since I was a qualified, competent educator.

Q. I see, sir. Mr. Jenkins, with this experience behind you how would you assess your chance of winning at-large election in Escambia County? A. Well, if I had to run again in a countywide election I wouldn't run because my chances would be about slim to none.

Q. Do you consider that your race was a major factor in your defeat? [727] A. Yes, I do.

Q. Any particular reasons? A. Well, in 1968 when I ran for a county commissioner's position they had six rallies and four of those rallies were held in territory that I thought was hostile to me. They had one at Escambia High School, they had one at Century, they had one at Bratt and one in the Cantonment area.

THE COURT: Now, that was the Democratic Primary, wasn't it, Mr. Jenkins? You're talking about those rallies, the Democratic Primary rallies?

A. Yes, sir, that was the Democratic Primary.

THE COURT: The Democratic Party?

A. Yes, sir.



THE COURT: So what you mean is you're disagreeing with the Democratic Party, yet from what the testimony is I've heard blacks are pretty well represented in that party and its local committee.

A. What I'm saying, Your Honor, is this. They had six rallies and they did not schedule one rally in a predominantly black area.

THE COURT: My point with you, sir, is that from what I've heard there's some pretty good black representation on that local Democratic Committee.

A. Yes, I don't want to differ with that, sir, [728] but I'm saying if there are seven rallies, if there are seven rallies I think at least two of the rallies should be in areas where I have somebody with similar pigmentation that I have. But if you're familiar with Bratt, Florida, I think that the rally in Bratt, Florida, served to my detriment.

THE COURT: By the same token, sir, if what you needed to be getting exposure in is the areas where you weren't strong, that's where you needed to be selling yourself to the people. What's wrong with that? A. Well, my thinking, Your Honor, is this. I don't think, I don't think I sold myself too well in Bratt because of the makeup of the Bratt area. I think I did, I think more harm came to me from the Bratt area than benefits.

THE COURT: All right, go ahead, Mr. Menefee.

Q. Mr. Jenkins, the Judge raised a question about the activity of the Democratic Party. Do you know whether or not the Democratic, local Democratic Party leadership in 1968 had a great deal of participation or what participation it had by blacks in its leadership at that time?

A. In 1968 as I recall there was one black on the Democratic Executive Committee out of a total membership of about fourteen.

[729] Q. I see, sir. And you heard the testimony this morning, did you not, concerning increased black participation in the Democratic — A. No, I was not here this morning, sir.

Q. I'm sorry.

THE COURT: I hope he wasn't. He's not a party plaintiff.

MR. MENEFEE: Yes, he is. This is Mr. Elmer Jenkins.

THE COURT: All right, go ahead.

A. I wasn't here this morning.

Q. Mr. Jenkins, would you please tell us what sources of funds you had available to conduct these various elections in the black community first. A. In 1968 I was able to raise approximately thirteen hundred dollars.

Q. Okay, sir, did that change? What about '74 and '76? A. In 1974 I raised, I was able to raise approximately two thousand dollars.

Q. I see, sir. A. And about sixteen hundred in 1976.

Q. Okay, sir. Now, was this raised in the black community or the white community? Could you please tell us? [730] A. Basically in the black communities.

Q. Okay, sir. Who did you, what types of individuals or organizations would you approach in the black communities? A. Churches, fraternities, social clubs.

Q. And in the white community? A. I talked to any individuals that I knew, and some organizations.

Q. I see, sir. Did you contact any coworkers at Pensacola Junior College? A. Yes, I contacted some coworkers at Pensacola Junior College and some of them contributed to my campaign.

Q. Okay, sir. have you ever received the endorsement of the Escambia Educational Association? A. Well, in 1974 they had an organization which endorsed certain candidates and they interviewed those in my areas and they narrowed it down to two and that was Mr. Bailey and myself.

Q. Who did they endorse? A. They endorsed Mr. Bailey.

Q. Okay, sir. Would you seek election again under the present at-large system? A. Yes, in 1976.

Q. I'm sorry, would you seek? [731] A. Would I now?

Q. Would you seek election again under the present at-large system? A. No, I would not.

Q. Are you familiar with Mr. Hollice Williams and Dr. Donald Spence? A. Yes, I am.

Q. They have both at times won election to the Pensacola City Council. How would you account for that? A. Well, in the case of Mr. Hollice Williams prior to that time no black had served on any elected body in this county and I think that the people in the area wanted to at least have token representation and they approached Mr. Williams and I think a lot of them knew him because of his job at the YMCA and they, I don't think they thought that Mr. Williams would be a threat because of that job that he had there.

Q. I see, sir. And for Dr. Spence? A. Now, Dr. Spence came later and I think at that time the county perhaps had grown ashamed of just having one and they appointed Dr. Spence to the city council.

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### TESTIMONY OF NATHANIEL DEDMOND

[747] NATHANIEL DEDMOND, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION

BY MR. MENEFEE:

Q. Good evening, Mr. Dedmond. Your Honor, this is Mr. Nathaniel Dedmond, who lives at 1531 East Cross. He's an attorney, part-time state attorney. He's been in private practice for eighteen years and he's lived in Pensacola for eighteen years. He attended law school at North Carolina Central University in Durham, North Carolina, and attended undergraduate school there also. He has sought election to the county commission in 1968 and ran again for county judge in 1970. Is that a correct statement, Mr. Dedmond? A. I would think that was exactly correct.

Q. Mr. Dedmond, have you been active in any civic clubs or religious organizations? A. I'm active in a lot of clubs but I think that my involvement with those clubs would not significantly affect my testimony one way or the other.

Q. Okay, sir. [748] A. I'm a member of the American —

Q. I'm trying to show, I'm asking if you are involved in numerous community organizations that would give you perspective. A. The answer would be yes.

Q. Could you give us a few examples, please? A. Well, my fraternity. I'm not as active as I should be. My church, the bar association, of course, which are not integrated, because we have no black lawyers actively practicing, but the normal clubs.

Q. Okay, sir, are there any other practicing black attorneys in Pensacola at this time? A. Not at the present time.

Q. Okay, sir.

THE COURT: Aren't you a member of the Bar Association of this circuit? A. I certainly am, Your Honor.

THE COURT: That's what I thought. I thought you said you weren't.

A. No, sir, I said I was, the American Bar, Florida Bar, Society of the Bar.

THE COURT: I thought I've seen you at the meetings. I don't think we're either there as much as we should be, but I've seen you there occasionally when I [749] was there.

A. That is a correct statement, Judge.

THE COURT: Go ahead.

Q. Mr. Dedmond, why did you decide to run for county commission in 1968?

A. Well, I suppose —

MR. FLEMING: Pardon me, Your Honor, just for clarification, not to keep the record confused any longer, I believe it was 1970 Mr. Dedmond was a candidate for county commissioner.

THE COURT: He said 1968. When were you a candidate for county commission?

A. I talked to one of the lawyers today and I told him I thought it was 1970 but I would have to defer to his recollection of the events of the year because I do not have my notes before me.

THE COURT: Well, let's find out when he ran.

A. I think it was 1970.

MR. FLEMING: I have his returns. It was 1970.

THE COURT: He ran for county judge in 1970?

MR. FLEMING: Well, I don't know anything about when he ran for county judge.

THE COURT: He said he ran for county judge in 1970 and commissioner in 1968.

MR. MENEFEE: It was 1970, Your Honor, and I [750] apologize.

THE COURT: He ran for county commission in 1970?

A. That is correct, and two days, two years later I ran for county judge.

THE COURT: Nineteen seventy-two?

A. That would be 1972.

THE COURT: Thank you.

Q. Thank you, Mr. Dedmond. Now, in 1970 then why did you decide to run for county commissioner, please, sir? A. Well, as I had started to say, I think the basis for my running is akin to anyone that jumps in the political arena and that is that you feel you can do a job better than the person that holds the present position.

Q. I see. A. I wanted to become a part of the policy-making or governmental body.

Q. Okay, sir. How did you, at the time of your candidacy how did you assess your chance of winning the election? A. Oh, I didn't take a defeatist attitude. I was optimistic about it but in reality I knew what my chances were and I was prepared to accept the consequences [751] of my candidacy.

Q. What's that reality? A. That reality was the fact that blacks are outnumbered by whites in this county and that from history, just looking at the past, I knew that a black had a very, very small chance of winning an election. And it was possible to do so only if you had a significant number of crossover white votes.

Q. Okay, sir. Is that assessment still true today? A. Exactly.

Q. Would you consider running in the present election system today with that reality? A. I don't know at my age with what has transpired I would consider running for anything, but to be entirely candid with you, no, I would not run. Number one would be that I do not think my chances of winning are great. I think they are nil with the present, within the present political setup. And number two would be a matter of personal choice. But significantly, I think primarily is because I don't have eight to ten thousand dollars to throw away as I had in '70 in my pocket.

Q. You say throw away. Is that the reality of that? [752] A. Well, let me be as candid as I can with you. In 1970 I spent approximately eight to ten thousand dollars out of my pocket. I would estimate that I lost approximately twice that amount of money from the practice of law because I was away, campaigning. Knowing what the realities of political life for a black is in Escambia County, Florida, I think you could in reality say that if I

were to run today that my eight to ten thousand dollars would be thrown away or lost.

Q. I see. A. I would not win.

Q. I see, sir. Thank you. During the course of your campaign what efforts did you make to raise funds in the black community, and would you contrast that with the effort you made in the white community, please, sir. A. First of all I realized at that time that I was not going to receive any significant amount of monetary consideration from the white community. From the black community I did not again expect any significant monetary contribution but that, the reason for my belief and my opinions are based on two different premises. Number one, from the white community I did not expect them to support me monetarily speaking because I knew that being a black, their money, their political dollar was going to go to the candidate who enjoyed the white [753] preference. Okay. I did not think that I would enjoy that preference. Number two, I do not think that I would nor did I receive from the black community any significant money for campaign purposes, not because of their nonpreference for me but because of, number one, their resources. Blacks do not have the economic power that whites have. It's a reality of life. And number two, those who did have the economic resources to support me in a manner consistent with their means were not willing to do so because of the track record for blacks.

MR. LOTT: Objection, Your Honor. The reason they didn't support him are his opinions entirely and under the rule the only opinion evidence he can give is firsthand information based on facts perceived by him, which neither one of these are related to.

MR. MENEFE: Your Honor, he obviously had to go



in the community and solicit funds from numerous individuals or organizations and in that reaction —

THE COURT: I'm going to let him answer the question, Mr. Lott, without going too far with it.

A. All right, I'll be more precise then. Blacks who were able, who had the resources to support Nathaniel Dedmond would not do so for the simple reason that they thought that I had no chance of winning and it was a question of whether they should throw good money after [754] bad money, if you understand what I mean.

Q. Thank you. Mr. Dedmond, during the course of the campaign did you ever receive any threats or intimidation of some phone calls of a racial nature?

A. Well, I can't say that I received over two phone calls. As far as stares, as far as attitudes and as far as atmospheres are concerned at political rallies, that's another thing. But I've been around for eighteen years and I'm not too easily intimidated.

Q. Okay, sir.

A. Now, number two —

MR. CATON: Your Honor, he's going beyond the scope of the question.

THE COURT: Mr. Caton, what did you say, sir?

MR. CATON: Your Honor, the question was whether he received any phone calls and I think he'd already answered that question.

MR. MENEFEE: My question is broader. I think I said threats and intimidation and harassment.

THE COURT: I think so.

A. Now, as far as my political signs are concerned, after you passed Olive or somewhere in the vicinity of the Nine Mile or Ten Mile Road then my signs somehow became the subject of somebody's intense attention because they were torn down as fast as I put them up.

[755] Q. Are you telling me that that is a racially more hostile area of your county? A. In my opinion, and that is strictly an opinion. But I would also say, If I may —

Q. Yes, sir. A. That in my opinion again while the Nine Mile Road or north of the Nine Mile Road is considered to be the more conservative area of Escambia County Florida, the area to the west of Pensacola, Florida, is also a conservative area as far as any expectation on the part of the blacks to get a significant number of crossover white votes. I think Mr. Oldmixon's records will bear that out.

Q. Okay, sir. Are you familiar with Hollice Williams and Donald Spence? A. I know both of them very well. As a matter of fact I saw Dr. Spence Saturday.

Q. Okay, sir. They had both been successful for election to the city council. A. I can't quite hear you. Will you speak up just a bit.

Q. Yes. They had both won election to the Pensacola City Council. A. That is correct.

Q. Both were originally appointed? [756] A. Of course.

Q. Do you think their appointment was a significant factor in their chance for gaining reelection? A. It was the factor and the moving mode or motivation.

Q. Okay, sir. A. If I might expand on his question,

I don't know whether His Honor will permit me, but you have to understand why that appointment or the appointment of these people, these two individuals, first to an elected position, is, was and will be a significant, well, would be a motivating factor in those individuals or any other blacks or black preference for candidates.

THE COURT: Mr. Dedmond, I've heard others talk about the appointive thing and say it's a difference to them and yet a man like you turns around and says, "I will not run because I have no chance of being elected because of my race." Being appointed doesn't change their race. Do you mean the fact once they're in office the people who wouldn't vote for them when they're first running for office, white people, will nonetheless change their minds and vote for them notwithstanding their race?

A. That is correct, Your Honor, but may I explain my answer. The question is once you have been appointed by, and I hate to use the word, [757] the establishment —

THE COURT: Well, appointed by due process of law. We can try that one, couldn't we, Mr. Dedmond, because that's the way the appointment comes through. Go ahead.

A. I agree with you. I agree with you.

THE COURT: All right, go ahead.

A. But when they're appointed by due process of law, as you say, Your Honor, involved in that is an endorsement on the part of those in power and once you have been appointed by the Governor or anyone, it doesn't make any difference, the city council, they represent the power structure and I believe that is a letter to the other people or a significant number of white voters to vote for that individual.

THE COURT: When you say power structure, what do

you mean? You mean there's a small group of white people in this county who are so powerful that they can dominate and dictate elections?

A. I don't believe that, Your Honor, but I think they have a significant —

THE COURT: What do you mean by power structure?

A. Okay, when I say power structure, I mean those persons who have the finances to support candidates, the power, the contacts to go out and get people if they [758] don't support them financially, to get out and work for those people, to pass the word around, Judge. That's what I mean by the power structure. I don't mean ten people.

THE COURT: In other words they can persuade people who are white to vote for black candidates? It can be done?

A. It can be done, Your Honor. I would suggest to the Court that E. W. Hopkins, president of Mutual Federal Association, can send out a letter to his stockholders or to his depositors and say, "We endorse this man or I think this is a good man," you see, and I give much respect to the man.

THE COURT: You don't know he has ever sent out such a letter?

A. I don't know that, Judge.

THE COURT: I sort of question whether he has. I don't know, and I'm not saying that he does not act and interest himself in races.

A. This is correct, Judge, and I say if he sends out a letter, I give it to the man, he's going to send it out, E.W. Hopkins, Jr., not Mutual Federal, but everyone knows in Escambia County, Florida, he's president of one of the most stable financial institutions in this part of the county.

Okay, in the county, period. [759] And when he sends out a letter and says, "I want, I support this man, I support this man," then I would say, Judge, that I could send out ten thousand letters and he could send out one and I would not be able to persuade as many persons to vote for a candidate as Mr. E.W. Hopkins would.

THE COURT: All right, sir, go ahead.

### DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q. Mr. Dedmond, earlier this afternoon there was testimony from Mr. Barney Burks, who's presently president of the Chamber of Commerce and former mayor, that he has been active and he testified he was active in politics and supported Hollice Williams. I realize you were using Mr. Hopkins as an example. Would you say Mr. Burks is an individual of similar qualities?

A. Same stature, the same, right. So I could have used his name and should have, perhaps.

MR. MENEFEE: I have no further questions, Your Honor. Thank you, Mr. Dedmond. \* \* \* \* \*

### TESTIMONY OF JAMES L. BREWER

[800] JAMES L. BREWER, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

### DIRECT EXAMINATION

BY MR. MENEFEE:

Q. This is Mr. James L. Brewer. He lives at 721 West Lloyd in Pensacola. He is presently a life insurance underwriter with Mutual Savings Life Insurance Company. He graduated from Washington High School and attended Washington Junior College. He's thirty-seven years old,

married, has one child. In 1975 he was a candidate for city council. He's a black citizen. Is that [801] a correct statement, Mr. Brewer? A. that is correct.

Q. Mr. Brewer, why did you decide to run for the city council election, office, in 1975? A. First of all because I reside in the city and there were several changes that I felt should and needed to be brought forth and I felt that I could be instrumental in helping to bring this change about.

Q. Okay, sir. Who was your opponent in the race in 1975? A. Dr. Paul Bruno.

Q. Okay, sir, and what was the outcome of the election? A. Well, he was the victor and I was the loser.

Q. Okay, sir, do you have any recollection of the number of votes approximately? A. Eighteen hundred.

Q. Difference? That's the difference in votes? A. No, that was my vote, eighteen something, somewhere in the neighborhood of nineteen hundred votes, and something with the write-ins, I don't recall exactly.

Q. Okay, sir. Mr. Brewer, when you decided to run for office, what chance of winning did you think you had? [802] A. Well, I didn't put a figure to it but I felt that I would give it the best try that I could and this is what I did. I didn't really think that I could win but I wanted to try and this is what I did.

Q. Mr. Brewer, when you were trying to raise funds for your campaign, what sort of success did you have in the black community, first off? A. They gave what they had, which was very little.

Q. What sort of success did you have in the white community? A. None, no contributions.

Q. Did you try to raise funds in the white community?

A. I did solicit some.

THE COURT: You say you solicited from who?

A. From the white community.

THE COURT: You solicited some white people?

A. Yes, I did.

THE COURT: People you knew?

A. Some of them were.

THE COURT: Others you didn't know?

A. Right.

THE COURT: Did you say you had any contributions from them?

[803] A. I did not receive any.

THE COURT: All right, sir.

Q. Did you encounter difficulties in soliciting funds in the black community? A. Yes, I did. Those who would, I did receive some. Do you need a figure amount?

Q. No, I'm interested in the kind of difficulties that you might have encountered in soliciting funds in the black community. A. In soliciting funds we, myself and some of the people who worked in the campaign, we had quite a lot, a lot of difficulty in getting funds. We tried with very little success.

Q. Do you think your race was a major factor in your defeat in this election? A. I would have to say yes, it was.

Q. Mr. Brewer, have you also had experience in radio broadcasting? A. I worked in the radio industry as a radio announcer here locally for about eight years.

Q. I see. Did you have your own program?  
A. Right. I did.

Q. Do you consider yourself well known in the community? A. Yes. I worked in public most of my life here.

[804] Q. After your experience in 1975 would you run again for the city council? A. Not under present conditions, no.

Q. Okay, sir, you are aware that both Mr. Hollice Williams and Dr. Donald Spence have been successful in elections to the city council, are you not. Are you aware that they have won election to the city council? A. Do I have an opportunity to answer that the way I must answer it?

THE COURT: He asked you if you were aware of the fact that Hollice Williams and Dr. Spence had won election to the city council. You can answer that question yes or no. Are you aware of the fact? A. I'm aware of it.

Q. Okay, sir.

THE COURT: Now let him ask you the next one.

Q. How do you account for their success? A. First, they were appointed first and then afterwards they were elected. They were appointed first.

Q. Okay, sir. Did you campaign in the white community? Did you solicit votes from white voters? A. I certainly did.

MR. MENEFEE: I have no further questions, Your Honor.

\* \* \* \*



## TESTIMONY OF CLEVELAND McWILLIAMS

[847] Q. May it please the court. This is Mr. Cleveland McWilliams. He lives at 3317 North Alcaniz. He is presently employed by the Escambia County School Board. Presently he's classroom teacher at Pine Forest High School. He's forty-five years old, graduated from Washington High School in Pensacola, from Florida A & M and from the University of West Florida, and he holds a Master's degree. He has previously been a visitng teacher with the Escambia County School Board, and I believe you told me dean, is that correct? A. Yes.

\* \* \* \* \*

## [864] DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q. Mr. McWilliams, have you considered seeking public office? A. Yes, I have.

Q. Would you offer yourself as a candidate — let me back up. What public office might you be interested in running for? A. County commissioner.

Q. Okay, sir. Would you run under the present at-large election system? A. No, I would not.

[865] Q. Would you consider running under a single-member district plan? A. Yes, I would.

Q. Why the difference? A. Well, to run now at-large to me, frankly, would be a waste of time and effort and money too because unless the white have a change of heart the blacks could not win at an at-large election. If you take the total black —

Q. You say the whites could not win in an at-large

election? A. No, the blacks. A black candidate could not win an at-large election.

Q. Do you presently serve as a committeeman?  
A. Yes.

Q. From your precinct, is that correct? A. Yes.

Q. What precinct is that? A. Ninety-one. It's changed to ninety now.

Q. Is that a heavily black registration precinct?  
A. Yes, it is.

MR. MENEFEE: Okay, sir, thank you very much. I have no further questions.

\* \* \* \* \*

## TESTIMONY OF EARL J. CROSSWRIGHT

[886] Q. No, that's all right. All right, this is Mr. Earl J. Crosswright. His address is 1202 East Yonge Street, I guess. A. Yes.

Q. Pensacola, and that's inside or outside the city? A. Inside the city limits.

Q. He's fifty-eight years old. He's presently the principal at A.M. DeVaughn School in the public school system. Did I get that right? A. Yes.

Q. He's been principal there twelve years. He's been employed by the Escambia County School Board thirty-one years. He was born in Evansville, Indiana, but came to Pensacola in 1947 as a teacher at Washington High School. He has a bachelor's in education from Lincoln University in Jefferson City, Missouri; a master's of education from Wayne University in Detroit. Now, Mr. Crosswright, is that correct? A. Yes.

Q. Have you ever offered as a candidate for election in local government in Escambia County or Pensacola? [887] A. None other than precinct committeeman.

Q. All right, sir, you have been a precinct committeeman in the Democratic Party organization? A. I am currently.

Q. You are currently? A. Precinct fifty.

Q. How long have you been a committeeman for precinct fifty? A. Four years.

Q. Okay, and could you tell the Court how you became a committeeman, how you got involved in that? A. Well, I've been interested in politics throughout my entire tenure here in Escambia County. We

needed someone to sort of go through the precinct and muster votes and get people to register and this kind of thing and we didn't have anybody who was actively involved so I attempted the chore of doing this.

Q. All right, sir, is that an elective office? A. Yes, it is.

Q. All right, who votes for you? A. Just the people in precinct fifty.

Q. Okay, is that precinct predominantly black? A. No.

Q. What's the percentage in that precinct? [888]  
A. It has changed since the voting but it's approximately thirty-seventy white.

Q. Thirty-seventy white?

THE COURT: Seventy percent white?

A. Yes.

Q. Were you opposed in that election?

A. No.

Q. All right, sir, did you ask anybody before you offered as a candidate or did anyone ask you if you would run as a candidate for that committeeman position? A. I don't recall anybody having asked me to do this.

Q. Who was the committeeman there before you, or did you have one? A. Yes, we had one. His wife is the female committeewoman at this time but I've never seen her nor him and I can't think of who he is at present.

Q. Mr. Crosswright, have you ever considered running for an elected office as school board member or county commissioner or city councilman? A. The idea has been in my mind at certain times, yes.

Q. Any of those in particular that you've thought about? A. Yes, city council and county commissioner.

[889] Q. Okay, sir, why have you decided not to offer as a candidate for those offices? A. Well, I have seen that heretofore no one of color has been able to make it so I thought it was a matter of throwing away money and this is why I didn't attempt it. I didn't have the money to throw away. This is one of the problems.

Q. Does the fact that the elections for all these bodies are conducted at-large in the county or in the city, as the case may be, affect your judgment and your decision?

A. Most definitely.

Q. And would you be more inclined to offer as a candidate if there were single-member district elections?

A. Yes, sir.

Q. Mr. Crosswright, did you testify at hearings conducted by the Escambia County Commission on the question of charter government for Escambia County?

A. Yes, sir.

Q. When was that? A. During, I don't know the time.

Q. What year was it? A. This past year.

Q. All right. [890] A. When they were going from, I testified at the Junior College at one time and on Jordan and Palafox, the clinic, Health Department there.

Q. What was the announced purpose of these hearings? A. To get the citizenry to give their opinion about the charter government program that was to be placed before the electorate.

THE COURT: This was before the committee, was it, Mr. Crosswright? That's where you appeared, before Mr.

Tennant's committee? A. I wasn't appearing. It was a matter of being in the audience. I was there during the time.

Q. What he means, was it the county commission holding the hearing or some committee appointed by the county commission? A. I've been involved in both. The very first time I was involved when the committee, the ad hoc committee was given an opportunity to make up the program itself, and I was involved there. When they came out with the program stating there would be five people voted in the precincts and two at-large, I think not precincts but in the district, two at-large.

Q. I wasn't aware of that. Tell me about that. When was that occasion you met with — I take it this was —

[891] THE COURT: That must have been the committee, of course. A. Yes, this was the committee.

THE COURT: All right, sir.

A. That the county commissioners gave the responsibility of putting together the charter government package, and of course I was at one of those meetings and this was open to the public also. And of course at that time they did have, they presented this to, as I understand it now, to the county commissioners. But at the other meeting at Palafox and Jordan this was removed from the package and it was changed to the at-large type program and I spoke at that particular meeting.

Q. What did you say at that meeting, the meeting of the commissioners now? A. I talked to the group. I was concerned about who represented me in precinct fifty since I had been a precinct committeeman for three years and had never met the, my district personnel.

Q. You mean your district, the commissioner who resided in that district? A. Yes, He had had an election

and he had not been in our district that I knew of, in my precinct, to find out who was voting for him or even to muster votes. I needed to know who the individual was because I was [892] having problems with baseballs being knocked into my yard and breaking my windows and I wanted some relief from this point of view so I went to this meeting to find out primarily who my county commissioner was and I asked who was the commissioner. I had already asked in the precinct and I couldn't find people in the precinct to know and it was amazing to find out that very few people even knew who their precinct committeeman was. I also went to City Hall —

Q. Knew who the precinct committeeman was or county commissioner? A. Not precinct committeeman; county commissioner. They didn't know who he was either.

THE COURT: This is not exactly what you asked him about. You wanted to know about the hearing, didn't you. You went there to find out who was the commissioner resident in your district, is that it?

A. That's right. That was my purpose in going in the first place.

THE COURT: You do know that the county commissioners represent all the people, not just the people in the residents district? You understand that, don't you?

A. I do. Yes, I did at that particular time.

THE COURT: Why didn't you go to the county [893] administrator or something instead of trying to find out about the county commissioner, just go to him? He's just resident in your district. All the people in the county elected him like all the rest of them.

A. I thought all were responsible for everybody in the committee, in the district, also, to do the things for the people that voted for them.

THE COURT: Anyhow that was the reason you were looking for him. Go ahead, Mr. Blacksher. Go ahead. That was the reason you were looking for him anyhow. Go ahead, Mr. Blacksher.

Q. Were you raising this point, this question, at the hearing, to make any point with respect to the apportionment proposal, the district proposal part of the charter government? A. Yes. This I was against at that particular time because it did not offer to me any relief because the commissioner at-large did not think enough of the people in his precinct, in his district, to see if they really needed any relief of any nature.

Q. So you spoke at the hearing in favor of the single-member districts? A. Yes.

THE COURT: And your reason for doing it was what now, sir?

[894] A. Well, I feel that any time that we have at-large type voting we do not have the contact, personal contact with the people who are supposed to represent us.

THE COURT: But you're saying your reason for wanting a single-member district was that you felt if you were in a district where your people alone represented him he would be more responsive to you than he would be at-large, is that it?

A. Yes. we would definitely know him at any rate even if he didn't respond to our wishes. At this time we didn't know him.

MR. BLACKSHER: That's all I have, Your Honor.



MR. FLEMING: May we have just a moment, Your Honor. The transcript of this particular proceeding is in the court file.

THE COURT: Do you want to cross examine him on that?

MR. FLEMING: It may be pertinent. Perhaps Mr. Lott can begin.

THE COURT: Go ahead, Mr. Lott.

MR. BLACKSHER: Your Honor, for the record, there was a transcript of this particular testimony that was filed, I guess, by Mr. Lott.

MR. LOTT: Right.

[895] MR. BLACKSHER: Pursuant to Your Honor's order that the parties make known any contacts with class members, so it's already in the file on that basis.

THE COURT: All right, sir. I don't know what he's looking for. Anyhow I want to cross examine this witness. Proceed, Mr. Lott.

MR. LOTT: I'll go ahead and start if Mr. Fleming can find it in the meantime.

### CROSS EXAMINATION

BY MR. LOTT:

Q. Mr. Crosswright, you had a conversation on the telephone with Mr. Caton a while ago, is that not correct, Mr. Don Caton, the city attorney? A. I'm pretty sure it's Mr. Donald Carr.

Q. Mr. Carr? A. Yes, some person called me by the name of Donald Carr.

Q. You talked about your feelings on charter govern-

ment at that time, is that correct? A. I didn't talk about it. I told him, I didn't give him any statement whatsoever.

Q. Okay, I think that's a good enough predicate, Judge, for what I'm leading up to. The conversation you had with him, did you express the opinion that the [896] question of whether or not blacks would have more strength under single-member districts as opposed to at-large districts is a very difficult question to answer? Is that what you told Mr. Carr? A. Yes, I did, because it would be a very difficult question to answer.

Q. Okay, so can we determine from that it would be your opinion that you're not sure whether it would be more advantageous for blacks to have at-large representatives or single-member representatives? Is that basically it?

A. No, no, I was stating that it would not matter whether he was, I'm concerned with the entire population, whether it be black or white. I think it would be better. When he said black, that ruled out any statement that I might make because I definitely feel it would be better for whites even to be represented by —

THE COURT: Mr. Lott, I believe his position is that he thinks, in other words your position on single-member districts is not concerned really with whether it would aid or help black people getting elected; your position on it is that regardless of who's elected he would be more responsive to the people in that district because they elected him and that's the reason [897] why you feel like single-member districts are advisable?

A. That's it, Judge, exactly. It would be good for white, Jews, Gentiles.

THE COURT: He made his position pretty clear to me, Mr. Lott.

Q. Okay, do you have an opinion as to whether blacks would have more benefit under a single-member district system as opposed to an at-large district system?

A. I think all people would.

Q. You think all people would?

A. Yes.

THE COURT: He's said that twice for you now, sir. Go ahead.

MR. LOTT: Well, to me, Judge, that seems inconsistent with the statement that it would be a very difficult question to answer whether blacks would have more strength in a single-member district. How do you reconcile that?

A. Well, you were indicating, Mr. Carr was indicating that only blacks, I inferred that he meant only blacks would be benefited by that and I couldn't make that statement because that isn't the way I think.

THE COURT: Mr. Lott, I'm at a loss why you're going on with this gentleman with this testimony. You go [898] and I don't know why you pursue it.

Q. Did you also state in the course of that conversation with Mr. Carr that you did not believe the county or the school board wanted to keep at-large elections because of racial reasons but instead that you felt that the only reason that they wanted to continue at-large elections was because they wanted to preserve the fact that they were presently in office? Did you express that opinion?

A. I didn't express it in the manner in which you are giving it. I did say, I did say that politics is a situation where those that are in would naturally want to do whatever would keep them in office.

Q. Is it your opinion that the reason the at-large system for school board and county elections are presently in effect is not because of racial reasons —

MR. BLACKSHER: Objection, Your Honor, that's getting a lot of mileage out of the testimony that came in from this witness's mouth earlier.

THE COURT: It is getting a lot of mileage.

MR. LOTT: Your Honor, the testimony was that he appeared at a charter government committee meeting and he spoke in favor of single-member districts and wanted to change from an at-large system to a single-member district.

[899] THE COURT: You went far afield on that one, sir. I'm going to sustain objection to that. That went too far out in opinion evidence and everything else. Objection sustained.

Q. At the Board of County Commissioners' public hearing on charter government did you express the opinion that all of the people should elect the people that they, that represents them? Is that what you testified, you stated at the public hearing?

THE COURT: Mr. Lott, if you've got something specifically he said there, because he has testified twice now, three times; he's said three or four times he thinks they ought to come from single-member districts.

MR. LOTT: Yes, sir, and at the public hearing I have a transcript filed in the court record that says all the people that are elected should represent all the people. Now, is that your statement?

A. I don't recall, but if it was, it was in it, the intent of it was not, I couldn't feel that way because I most certainly feel that the people in North Florida should not be elected

by the whole State of Florida. And that was an erroneous statement if I made it.

Q. Well, in the context of county commissioners?

A. Beg pardon?

[900] Q. In the context of county commissioners in Escambia County does that statement hold true that you made?

A. No.

Q. You did make that statement, did you not?

MR. BLACKSHER: Your Honor, the witness answered "No," and I think counsel is arguing with the witness.

MR. LOTT: I'm not arguing. I'm asking if he made the statement.

THE COURT: He says he does not know but if he did make it, it is not what he meant to say or what he has said today. It's pretty clear, Mr. Lott.

MR. LOTT: I don't have any further questions, Your Honor.

THE COURT: Any other cross examination? Any redirect with this witness?

MR. BLACKSHER: No, Your Honor.

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**[3] TESTIMONY OF WILLIAM H. MARSHALL**

called as a witness by the plaintiff, being first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. STILL:**

Q. May it please the court this is William H. Marshall, who is fifty-two years of age, was born here in Escambia County, has been with the Escambia school system for nineteen years and is now the principal of Spencer Bibbs Elementary School. Is that correct, Mr. Marshall? A. That's correct.

Q. All right, Mr. Marshall, have you ever run for the City Council? A. Yes, I've run for the City Council on two occasions.

Q. Which two years did you run? A. I think it was 1969 and '71.

Q. All right, sir. What ward to you live in? A. Ward 2.

Q. All right, sir. Have you ever run for any other office in Escambia County? A. I've run for the State Legislature.

Q. Have you also been involved in other people's campaigns? A. Yes.

[4] Q. All right, sir, whose campaigns particularly? A. Well, I am an active member of the Democratic Party Local Committee and also State Committee so since 1968 I've been actively involved.

Q. In 1969 when you first ran for the City Council, yes, the City Council, what was the motivation for you to

run? A. Well, at that time no blacks had been previously elected for office and I felt that it was a good time for me to make a try. I had a pretty good reputation within the community and I was very well known.

Q. All right, sir, what chance did you think you had of winning when you decided to run? A. Well, I didn't feel like that I had much of a chance but I was hoping.

Q. All right, sir, why did you decide to run for the City Council, for instance, rather than a county-wide office? A. At time because the bulk of the black voters lived within the city limits.

Q. If the City Council remains an at-large position would you seriously consider running for that position again? A. I would have to think about it until the climate changes; I think it would be an act of futility.

Q. All right, sir, what about running for a County [5] Commission office? A. The same thing would hold here with the present system.

Q. All right, if it remained at-large? A. Right.

Q. When you ran in 1969, what was the approximate cost of your campaign? A. Well, in all I think approximately it was close to five thousand dollars.

Q. How many thousand? A. five.

Q. Five thousand dollars, and in 1971 about how much did you spend? A. About the same.

Q. Do you remember how much you spent on your legislative race? A. It was, I can't give the exact figures but it was more than that amount.

Q. More than five thousand dollars? A. Right.

Q. Did you find it was difficult to raise this kind of money? A. Very difficult.

Q. At the time that you ran for the City Council in 1969 and 1971 was there a qualifying fee to run? [6] A. In '69, no.

Q. What about '71? A. In '71 I don't, I'm not certain but I don't think that fifty dollar fee was in effect at that time.

Q. If it was not in effect in 1971 do you know when it was put on? A. It was sometime after that. I think it was about four or five blacks in the race in '71 and after that they got the fifty dollar fee.

THE COURT: That's a primary party fee?

A. No, this is the city election.

THE COURT: This was in the city election?

A. Yes.

THE COURT: I thought you were talking about a fee in the representative's race.

MR. STILL: No, sir, we're talking about the non-partisan city race.

THE COURT: All right, sir. Go ahead.

Q. Were you the only black who was running for the City Council in 1969? A. If I remember correctly, yes.

Q. Were you the first black who had run since 1955 for the City Council to your knowledge? A. To my knowledge, yes.

Q. Were you the first black who had run since 1955 for the City Council to your knowledge? A. To my knowlege, yes.



Q. All right, sir. Did you receive any support [7] from the white community in 1969? A. At the time there were few whites who were active in civil rights work. I got some support from them and if I remember correctly I got a little help from the Young Democrats.

Q. Did any white publicly endorse you? A. No.

Q. In 1971 did any white publicly endorse you? A. No.

Did you get the same type of help behind the scenes in 1971? A. Yes.

Q. Both Hollice Williams and Dr. Spence have been elected to the City Council but you and other blacks have not been successful in being elected to the City Council. To what do you attribute this difference?

MR. CATON: Your Honor. I'll object to that question as to what Mr. Marshall attributes it to. The facts speak for themselves and I believe it's immaterial.

THE COURT: You're asking for an opinion now.

MR. STILL: Yes, sir, I am asking for an opinion but it is based upon his observation of those campaigns.

THE COURT: Well, I'm going to let him give his observation but I guess to that extent I'll let it come on in. To that extent the objection will be overruled. Go ahead.

[8] Q. Thank you. A. First I would like to say I think I'm the person responsible for Hollice Williams' initial appointment to—

THE COURT: He didn't ask whether you were responsible for his initial appointment. He wants to know why were they elected when you weren't, any facts you can give us respecting that.

A. Well, my only thing is that Hollice had worked for

the YMCA all of his life, we were in high school together, and he was very familiar with the city fathers.

THE COURT: He worked with white people and fairly familiar with city fathers?

A. He worked at the YMCA.

THE COURT: YMCA?

A. Right.

THE COURT: All right.

Q. By the way, at that time were there two YMCAs in town?

MR. CATON: Your Honor, I object to that question as being totally irrelevant.

THE COURT: What is the relevance of that, sir?

MR. STILL: Simply to show segregated institutions in the city at that time, Your Honor.

THE COURT: I'll let you ask him. Go ahead. I guess [9] it might have some small relevance.

A. To my knowledge there weren't any blacks YMCAs at that time.

Q. Were blacks members of the other YMCA that you know of? A. No, I don't think they had a branch.

Q. Was the Ku Klux Klan active in any way in opposing your candidacy in any of the three elections in which you have run? A. Only from second hand information. I can't give any first hand information on this because of the nature of how they operate.

Q. All right. Have you ever had any contact with the

Klan because of any of your activities? A. During the Escambia High School crisis I was threatened and I had to have the Sheriff's Office and City Police Department to guard my home along with my ex-wife's home.

Q. All right, sir. Do you know of any white candidate over the last fifteen years who has run who has publicly advocated more vigorous enforcement of the Equal Employment Opportunity laws and the Fair Housing laws in Escambia County or in the City of Pensacola?

MR. LOTT: Objection, Your Honor. Whether or not this person here knows of the fact that any particular person [10] espoused that view is of no relevance at all. If they want to prove that fact it's up to them to come in and show that case is true but there's no indication here this gentleman has made any kind of research to show the negative of a question like that and his determination of that is of no relevance at all.

THE COURT: I suggest to you he's been long active and interested in politics in this county, Mr. Lott.

MR. LOTT: Yes, but the fact he doesn't know anything about it doesn't mean it didn't happen and therefore it can't be relevant.

THE COURT: I agree with that. There might be some slight relevance to it and that's about all it amounts to. You may answer the question.

A. Will you repeat the question, please.

Q. Yes, sir. Do you know of any white candidate who has run for office in Escambia County or the City of Pensacola during the last fifteen years who has advocated more vigorous enforcement of the Equal Employment Opportunity laws or the Fair Housing laws? A. No.

Q. Do white candidates sometimes come to rallies in black neighborhoods? A. Yes.

Q. Do they make speeches to blacks at those rallies? [11] A. Yes.

Q. Do they make promises to blacks at those rallies? A. Yes.

Q. At any of those rallies have you ever heard anyone promise more vigorous enforcement of the Equal Employment Opportunity laws? A. No.

Q. All right, sir. Now, in 1969 when you first ran for the City Council what were the issues that you espoused and talked about in your campaign? A. Basically, if I can remember correctly, paving, housing and jobs were basically.

Q. What was the issue about paving? A. Well, in most of your black community areas where they're strictly black community you'll find that at that time, as now, very little paving was done and very little effort on the part of the city to provide the conveniences or services that were being provided in other portions of the city.

Q. What was the issue regarding housing? A. At that particular time and now Pensacola Housing Authority was still not doing, in our opinion, carrying out their responsibility to the citizens who live in these particular areas, and also at that particular time there was segregated housing.

[12] Q. And did you advocate desegregating public housing? A. Yes.

Q. What was the issue regarding jobs? A. Jobs, more jobs; at that particular time no blacks were in supervisory

positions within the city. The only person that we had that was in any kind of a managerial position was Mr. Sanders at the Municipal Auditorium and other than that they were all at lower level of employment.

Q. What as that gentleman's name? Sanders? A. Yes, Walker Sanders.

MR. STILL: I believe that's all the questions I have of Mr. Marshall.

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[30] MR. STILL: Your Honor, I believe you had some questions of the witness.

THE COURT: The one question, yes. I'll take just a minute. What I was going to ask you, Mr. Marshall, was this. You testified back in 1969, the reasons about the housing there and it was segregated and that kind of thing. Are those conditions, you may have partially answered, at least you have certainly to some extent. For example in this area today do you have a segregated housing problem that results from official action? I realize people tend to segregate themselves in housing. You and I know that. I'm talking about a segregation problem that results from official action. That is what you're saying you had back there.

A. Right.

THE COURT: What about that situation today?

A. To a certain extent, yes, because blacks applying for housing under the Pensacola Housing Authority, they're either sent basically to the court here, I'm sorry, Gonzales Court now and the court downtown, but —

[31] THE COURT: Aren't some white people sent there too?

A. Yes.

THE COURT: So it's not segregated?

A. Not entirely but it's easier for them to get on, if they're on the waiting list and there's available housing after a certain number of units have been filled in some of these areas such as Gonzalez and also Moreno Court, blacks aren't going to get those. They'll have to be put on the waiting list for Morris Court and possibly Attucks Court.

THE COURT: Do white people have to be put on the waiting list?

A. Yes, but, see, if they want to, Attucks Court is 100 percent black. Morris Court is 100 percent black.

THE COURT: Well, how does that prove any official segregation, though?

A. Well, it's not official because it's the law of the land that it can't be official but it's enacted in other ways.

THE COURT: Well, I know, but how could it be enacted, if you've got a list and go by the list?

A. The Pensacola Housing Authority I don't think acts according to what, the way they're supposed to act, and it's been pointed out in the last study.

THE COURT: I'm sure I understand that. You are saying you believe the Authority are intentionally [32] discriminating against blacks and doing that today?

A. I believe the people making the decisions are doing it

on their own. It's not an official part of the code but they're still doing it.

THE COURT: You mean making decisions based on racial factors?

A. Right.

THE COURT: You have nothing really, no hard evidence of that; that is just your personal opinion you're expressing from what you've observed?

A. Well, it is my personal opinion.

THE COURT: That's all I need, Counselor.

#### REDIRECT EXAMINATION

BY MR. STILL:

Q. Mr. Marshall, let me ask you a few questions that were covered in cross examination. How were you elected? Are you elected or appointed to the County Democratic Committee? A. You are elected from your precinct.

Q. All right, sir. Now, is the precinct that you live in predominately black? A. It's approximately, I think, about, well, it's more than 50 percent black.

Q. All right, sir. Now, what about the state committee? Are you elected or appointed to that? [33] A. We are elected in our general meeting by the delegates.

Q. At a meeting of delegates? It's a convention type thing, is that right? A. Right.

Q. Are you elected to represent a particular area? a. No.

Q. It's for the whole county? A. Right.

Q. How many are elected from Escambia County? A. There are two state committee people that are elected, a committeeman and committeewoman.

Q. Now, the party post that you hold, the state party, secretary-treasurer, is that elected or is that appointed by someone? A. That's elected. Well, let me explain the process. First you get on the ballot in order to be elected to the local county committee. All right, from then on it becomes an in-house function of the party. The officers are elected by the committee members at local level and also the officers at state level are elected by state committee members.

Q. Approximately what percentage of the Escambia County Democratic Committee is black? A. I'd say roughly 40 percent.

[34] Q. Excuse me, I didn't hear you. A. Roughly 40 percent.

Q. Forty, all right. What percentage of the State Democratic Committee is black? A. Less than 1.

Q. Less than 1? A. Yes.

THE COURT: Less than one what, sir?

A. One percent.

THE COURT: Of the State Democratic Executive Committee?

A. Yes.

THE COURT: Is less than 1 percent white?

A. Black.



THE COURT: Less than 1 percent black. I thought he asked about white. Well, your local executive committee —

MR. STILL: If I asked about white I'm sorry. I meant to ask about black.

THE COURT: Your testimony about the local committee, is that 40 percent white or black?

A. It's about 40 percent black.

THE COURT: Forty percent black.

Q. Mr. Marshall, have you participated in drawing up with the Democratic Party or has the Democratic Committee while you've been a member of it, State Democratic Committee, drawn up any sort of affirmative action plan? [35] A. Yes.

MR. RAY: Objection. It exceeds the scope of direct.

THE COURT: How's that? You're starting all over on direct examination, aren't you? Why didn't you bring this out on direct?

MR. STILL: Your Honor, I didn't go into party posts on direct examination. It was brought up on cross examination.

THE COURT: No, it was brought up in response on cross but now you're getting into something even beyond party nomination, getting into affirmative action. If you want to reopen your direct examination I'll let you do it but I'll give him opportunity on cross.

MR. STILL: I'm not trying to.

**THE COURT:** You're reopening by going into an area of affirmative action because nothing has been brought up with the witness on it, as I see it. As you wish to do so, proceed to do so and we'll go back to cross examination.

**MR. STILL:** Your Honor, may I explain why I'm going into this area?

**THE COURT:** Yes, sir.

**MR. STILL:** The inference that can be drawn from cross examination was that a, that blacks have an equal opportunity or very good opportunity to be elected to Democratic positions. I am simply trying to show that it is a national policy of the party, Democratic Party, that there must be affirmative [36] action plans.

**THE COURT:** If that's the kind of affirmative action you're talking about it might be different. Go ahead, sir. I thought you were going into something else.

**Q.** All right. Mr. Marshall, what sorts of things does this affirmative action plan cover? **A.** Well, it guarantees that minority groups will be represented in all strata of the Democratic Party.

**Q.** All right, sir. Now, are those, is that a national policy of the Democratic Party? **A.** It is the national Democratic Party down through the state into the local county unit.

**THE COURT:** Counsel, with deference to you, in going into this, it is pretty well established blacks are treated all right by that party. Now you're just showing even more firmly they do pretty well by them. I don't understand. You're not adding or detracting anything from the prior testimony.

MR. STILL: I'm simply trying to show that the motivation for that was that it was a national policy.

THE COURT: Regardless whether it's a national policy or local policy or whatever, it may be, it's policy that's effective, isn't it? You're certainly not going to show to the contrary, it is not local policy. Go ahead, sir. I just think you're getting stretched out, Counselor.

[37] Q. Let's speak for a moment, Mr. Marshall, about rallies that are held in black communities. You were asked whether candidates come and make promises. I believe you also responded that racists will sometimes come in and make statements at these rallies in the black communities. Do those white candidates who come there follow through on those promises once they're elected?

MR. RAY: Objection to exceeding the scope. He's getting into responsiveness. If he wants to recall the witness on that, let's do it.

THE COURT: No, objection overruled. You went into this on cross.

A. Well, very little has been done by, I guess, the majority of the candidates that come in and make these promises. They come in with their statements that, what they're going to do, but we see very little of it.

Q. About what percentage of the candidates for City Council come to those rallies in black neighborhoods?

A. If it is a rally that's sponsored, for instance, by a group or something, usually you have quite a few of them turn out.

Q. Is it unusual to see white candidates at these rallies? A. No.

MR. STILL: Thank you very much.

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[43] MR. CATON: Your Honor, I don't understand how if a witness decides he didn't like what he said he can come back again, and this opens up the door to all witnesses who decide they didn't like what they said.

THE COURT: Mr. Caton, if it opens up the door you take him on cross examination and see why he changed his mind. It goes to the weight of the evidence. The man has a right to change his mind on testimony and it goes to the weight. It is true the question came late and it's a quick question and answer. Note the objections for the defendants. I'm going to let you call him back for the limited purpose only of going into that one statement, nothing else.

MR. STILL: Yes, sir, that is all.

THE COURT: All right, call him.

MR. STILL: Mr. Marshall.

WILLIAM H. MARSHALL,

recalled as a witness by the plaintiffs, having been previously duly sworn, further testified as follows:

DIRECT EXAMINATION

BY MR. STILL:

Q. Mr. Marshall, you testified yesterday and so you're still under oath. Mr. Marshall, yesterday there as a question to you regarding access to the political process which came, I believe, at the end of cross examination. What do you mean or what did you mean in answer to that [44] question about access to the political process? A. I only meant that legally the access to the political procedure was there, legally. The Democratic Party throughout its struc-

ture provides for equal opportunities for everyone but you get snarled down when you get into the realities of being able to fully participate in the political process. You can't, for instance, garner enough funds by being black, you can't make the necessary contact. Very seldom will you get invitation to the clubs or organizations that will mean the difference in whether or not you are elected, such as the Lions, Kiwanis and et cetera, and this is what I meant. I didn't mean that you had full access to all of the ramifications of the political process.

Q. Thank you, sir. Now, after you testified yesterday did you come in the courtroom and listen to any of the testimony? A. Yes, I did.

Q. Do you remember which witnesses you listened to? A. I listened to Mr. McWilliams, I think, Mr. Royster and Mr. Crosswright. I think these were the ones.

MR. STILL: All right, thank you very much, Mr. Marshall.

THE COURT: Cross examination?

MR. RAY: Thank you, Your Honor.

[45] CROSS EXAMINATION

BY MR. RAY:

Q. Mr. Marshall, how did it come about that you were here again this morning? A. I was asked to return by the lawyers.

Q. When did you discuss with them your testimony yesterday and therefore again today? A. Basically I didn't discuss it. I was asked to, for an explanation.

Q. Did the attorneys ask you for an explanation of what you meant by your testimony yesterday? A. Yes.

Q. And the explanation that you gave them was what? A. Well, the same as I've stated this morning.

Q. I see. Now, what you stated this morning was that there was, there is the legal access to the political process? A. Right.

Q. You don't deny that? A. No.

But you're saying as a practical matter you can't fully participate? A. Correct.

Q. Okay. You mentioned three times, invitations to such things as Lions Clubs and Kiwanis Clubs. [46] A. Yes.

Q. That is one example of what you mean about not being able to fully participate, is that correct? A. That's correct.

Q. Would this be for purposes of being able to speak to the memberships of those clubs and address them in meetings? A. That's correct.

Q. For instance if you were a candidate for office?

THE COURT: Is that what you meant by that, Mr. Marshall? A. Yes.

Q. Just to make sure I understand what you're saying, Bill, if you were a candidate for office you are not, because of your race, the recipient of invitations to speak to those luncheon clubs and whatever about your candidacy? A. That is correct. Nor do we get full participation from the media either.

Q. Okay, now, as far as —

THE COURT: What was that, sir?

A. From the media.

THE COURT: What do you mean?

A. We usually are not given the same kind of coverage as white candidates in the media.

[47] Q. Have you — please recount to me all the details of each and every instance when you requested media coverage and the same was not afforded to you. A. All right, during my, at least all of my campaigns, I talked to Earle Bowden at the News-Journal and I talked to others and I haven't received the same kind of coverage. Another thing is that they don't —

Q. Let me interrupt you at that point now. You say you talked to Earle Bowden but you haven't received the same type of coverage? A. Right.

Q. Newspaper coverage? A. The same kind of coverage that my opponents or other white candidates had from the media. For instance our announcements that we're going to run, whereas the white candidate can get almost a full page on the front page announcing his candidacy black candidates can't do this. We haven't been doing this.

Q. Okay, as far as you're concerned, your races, you have never received a full page on the front page announcing your your candidacy, is that correct? A. Right. That's correct.

Q. How much column inch or space would your announcement of candidacy take up in the newspaper, and on what page or section would it be? [48] A. Well, on an average the news media usually along with pictures an-



nounces, gives the biographical data of a candidate and also makes the announcement that he's going to run for, say, an office, and et cetera. Usually when blacks are going to run, if they get anything it will be a black enters this particular race or a black is vying for such and such a race, and this is the way it goes.

Q. Okay, Mr. Marshall, I'm going to ask you to limit your comments as I've limited my question. I want to talk about your races first. How much publicity has the newspaper given to your races, your race? A. A very minimum.

Q. And where have those articles appeared in the paper? A. Mostly, most of the time when they have appeared on an average they were in a hidden comment or in the full reporting, for instance, on a particular race.

Q. I see.

THE COURT: Everybody else was in the full report?

A. Yes, but they're getting along with that, they're getting individual announcements and et cetera. Anything they do, for instance, if they speak to —

THE COURT: All right, sir.

Q. Okay, sir, you have never had a separate article announcing your candidacy? [49] A. I don't recall one.

Q. Now, this is what you mean by full participation of the media as far as the newspaper is concerned? That's your complaint in that regard, is that correct? A. That's correct.

Q. Okay, now, I think you mentioned other black candidacies that you've observed. I believe your testimony

was that there is always some suggestive headline that a black enters this race. A. Right.

Q. Is that correct? A. That's correct.

Q. Cite me the names of the black candidates who have been subjected to that kind of publicity and when. A. All black candidates as far as I know have been subjected to the same type of treatment, either the first black to do this or the black candidate, and specifics, my race with Mr. Brockett for the City Council, this was vividly pointed out. It in my opinion polarized the community, black against white.

Q. That was Marshall against Brockett, what year? A. This was 1971 if I'm not wrong.

THE COURT: Who was that? Broxson, did you say?

A. Brockett.

THE COURT: B-R-O-X-S-O-N?

[50] MR. CATON: B-R-O-C-K-E-T-T.

THE COURT: Brockett.

Q. What was done in that race? A. The same kind of polarization. I remember the news media, the paper, a day prior to election said, "This is your choice," and here we are; I think the editorial read that, "You will know what to do," something to that effect. This was in the editorial the day prior to the election.

Q. Was this the article in which the newspaper sets forth their endorsements of candidates? A. This is one of the articles where they, those of us locally know that they, for the past few years they have not literally endorsed but what they have done, they have circumvented endorsement by projecting certain candidates.

Q. By doing what? A. Projecting certain candidates. I meant by that they have wrote their stories in such a slanted way where it was evident who they were endorsing or selecting.

Q. Is that what happened between you and Mr. Brockett in 1971 in your race for the City Council? A. That's correct.

Q. That the day before the day of the election there was a slanted story against you and in favor of Mr. Brockett? A. Correct.

[51] Q. And did it have your pictures? A. I don't think this particular article had a picture of mine in it.

THE COURT: You say this was the day before your election?

A. The day before election. I think there was also an article the morning of the election.

Q. Okay. And do you remember any better what it said, either that slammed you or was that in favor of Brockett? A. Well, it was typical of what the News-Journal usually does in reporting, particularly on black candidates. The only, well, number one, they make sure that you are, it's known throughout the county that you are a black candidate with the insinuation that, "You know how to vote." Not only that is that WCOA the day of election polled precincts —

Q. Mr. Marshall, let me ask you to limit your comments, please, to the newspaper. We're going to take every one of the media as far as it relates to you and other black candidates, so let's talk about you and the newspaper.

THE COURT: First, is what you're telling me, and you'll get to the rest — go ahead.

MR. RAY: Pardon?

THE COURT: You're telling him let's stay with this and you'll get to the rest later.

MR. RAY: Yes, sir.

THE COURT: Go ahead.

Q. Okay, that was in 1971? A. If I remember correctly.

Q. Okay, any other instance in which this denial of full participation in the media by the newspaper, as far as you're concerned? A. This has happened in each election that I have entered into and I ran in three.

Q. Okay, let's take them. What's the next one after 1971? A. It would be my legislative race.

Q. When was that? A. If I'm not mistaken I think this was during the '74 term.

Q. Okay, who did you run against? A. Presently Senator Tom Tobiassen.

Q. Okay, what did the newspaper do to you then? A. It did the same kind of reporting on me that it had done previously.

Q. Specifically? A. Specifically slanted articles by the mere fact that I was black and on one occasion it noted that I happened to have been a very strong black candidate.

[53] Q. What type of article was it? Was it an endorsement article, a genuine news article, announcement of candidacy? A. I think this was in the overall article and also the editorial, as usual, the editorial comments.

Q. Editorial, okay. Anything else in that race? I assume that was with regard to the general election. A. Right.

Q. Who had the newspaper endorsed in connection with the Democratic primary prior to that general election? A. I can't recall that.

Q. Okay, anything else in that election? A. Nothing that I can specifically recall.

Q. Okay, what was your next race? A. I believe it was only three.

Q. Okay, you mentioned Marshall versus Brockett in 1971, Marshall versus Tobiassen in 1974. A. Marshall versus Elebash in 1969.

Q. Okay. Did the newspaper do the same thing to you then? A. Correct.

Q. Specifically what? A. Again lack of proper or equal coverage and slanted articles that, when we were covered.

\* \* \* \* \*

## TESTIMONY OF DR. CHARLES L. COTTRELL

[3] DR. CHARLES L. COTRELL,

called as a witness by the plaintiffs, being first duly sworn,  
testified as follows:

## DIRECT EXAMINATION

BY MR. MENEFEE:

Q May it please the Court, this is Dr. Charles L. Cotrell. He lives at 508 West Craig Street, San Antonio, Texas. He's thirty-seven years of age. His education includes a BA and MA degrees from St. Mary's University and a Ph.D degree in the field of political science from the University of Arizona. He is married and has two children. He is employed as a professor of political science at St. Mary's University, San Antonio, Texas. He's been teaching at the university level, both undergraduate and graduate, for approximately sixteen years. Is that a correct statement, Dr. Cotrell? A That's correct, Mr. Menefee.

THE COURT: You offer him as an expert in what area?

MR. MENEFEE: The field of political science, Your Honor.

THE COURT: Political Science?

MR. MENEFEE: Yes, sir.

THE COURT: Does anyone wish to interrogate respecting qualifications?

MR. CARR: No, Your Honor.

[4] MR. MENEFEE: Your Honor, I would like to put in some additional information about his background.

THE COURT: Excuse me, I thought you had finished.

Q Dr. Cotrell, would you please tell us what professional organizations you're a member of. A I'm a member of the American Political Science Association. I'm also a member of the Southwestern Political Science Association. I'm a member of the American Society of Public Administrators.

Q Would you give us a brief description of your publications and convention papers, please, sir. A Yes. I'll spare the court the convention papers. There are some fifteen of those. Publications include articles for example in *Publius*, the *Journal of American Federalism*, on the Voting Rights Act and Local Standards of Representation; monographs on municipal services equalization published by the Department of Urban Studies of St. Mary's University, and the effects of at large elections on blacks and Mexican-American voters in Texas, published in government publications, among other things.

Q Okay, sir, would you tell us very briefly what research grants or fellowships you've been the recipient of. A Yes. I've received grants from the National [4] Science Foundation. I've received a grant from the John Hay Whitney Foundation of New York to research political access and governmental services in four Southwestern cities that ran for four years. I have also received grants to conduct videotape interviews of Southwestern political figures as well as Latin-American political figures in 1976 and 1977.

Q Would you briefly describe the courses that you teach at the university. A I teach courses in public administration, in American political thought and other courses in political theory, and I also teach courses in political attitudes and voting behavior.

Q On this basis we ask the court to accept Dr. Cotrell as an expert in the field of political science.

THE COURT: You don't wish to inquire?

MR. CARR: That is correct, Your Honor.

THE COURT: You may proceed.

Q Dr. Cotrell is your fee for working on behalf of plaintiffs in this case contingent on the outcome of the case?

A No, it is not.

Q When were you first contacted by Mr. Blacksher and myself? A I was contacted in January; January or February of 1977.

[5] Q Okay, sir. What did we ask you to study?

A You asked me to examine the impact of the at large election systems in Pensacola and in Escambia County, in the school district races and also in the County Commission, on the access of black voters.

Q Okay, sir.

THE COURT: The School Board and County Commission? A Yes, Your Honor.

THE COURT: Well, those were the two? A Pensacola, City of Pensacola, and the County Commission and the School Board.

THE COURT: Oh, I see. All right, sir. A Yes.

Q Dr. Cotrell, have you been a witness in other litigation similar to this? A Yes, I have.

Q Dr. Cotrell, would you please tell us how you went about preparing your study. What sources did you con-



sult? A I began studying the Pensacola and Escambia County electoral system first by coming over here on, I suppose, five or six different occasions from the period '77 through '78. I asked for raw vote returns and have examined the raw vote returns for numerous elections in the city, the county and the school district. I have asked [6] for and examined the regression analyses run on the city and the school district and the county, those analyses now in evidence before this court. I examined for background material newspapers, any kind of printed material that I would find on Escambia County, some on Florida and the South, and also I conducted interviews with some twenty to twenty-five persons as background. They were informal interviews attempting to learn more about the politics and the dynamics of elections in the city and the county and the school district.

Q Okay, sir. A I also, I might say, did spend some time actually, as it were, driving and walking the county and the city itself.

Q Okay, sir. And have you been present through the trial of the case? A And I've been present through the testimony in this trial up to this time.

Q Okay, sir. You mentioned newspapers. Over what period of time have you reviewed newspaper articles? A Roughly 1955 to 1978. The brunt of that analysis, however, has been in more recent years.

Q Dr. Cotrell, I would like to ask you to first help us understand two terms, to give us a definition, if you will, please, sir, of first what is a [7] polarized vote? What does it mean to you as a professional? A. A polarized vote is a voting situation or a dynamic wherein two recognizable groups vote differently and usually over time on candidates or issues. That's what a

racial, a polarized vote means. It could be based on race or based on something else.

Q Okay, sir, you mentioned a time factor, over a period of time. What sort of period of time do you need to study to make such a judgment? A Well, it's my opinion that you would want to take a fifteen to twenty year period, longer if possible, and examine the patterns, voting patterns, over that period of time.

Q The next term I wish you would address, Dr. Cotrell, is vote dilution. A Vote dilution is a term which means that the voting preference of a group, a cognizable group, has been submerged or thwarted or canceled in the context of, it's usually used in the context of racially polarized voting. That's the way I've heard it. And in the context of racially polarized voting dilution means that the voting preferences of one group are thwarted over time by the voting preferences of another group.

Q Okay, sir. This time factor that you referred to, would that be similar to the one, the same time span [8] you mentioned in relation to the polarized vote definition? A Well, I think, if I understand your question correctly, before one would reach a judgment concerning dilution you would want to look at the phenomenon over time. You would not want to isolate the one race or two races or a small, a very short span of time.

THE COURT: Doctor, let me interrupt. On your dilution, it does not include the factor of some form of official action on the part of the state or the county or the city that either purposely or has the effect of dilution? That's not a factor in your definition of dilution? A That's correct, Your Honor.

THE COURT: Your definition doesn't get into that? A My definition of dilution really deals with voter preferences being submerged.

THE COURT: I understand what you said, yes, sir, and that's the reason you tied it to polarization as a factor in it that shows it consistently over a period of time, because one race has more political votes than the other; the other group is simply not, doesn't get anybody elected and that kind of thing. A That is correct, Your Honor.

THE COURT: And you don't take in that other factor. I didn't think I heard it. Go ahead, sir.

[9] Q Dr. Cotrell, is this dynamic of vote dilution associated at times with at large election systems? A Yes. The notion of dilution in behavior and in law, I think, has been examined principally in the context or situation of at large elections. What happens in an at large election structure or electoral system, if you have the existence of racially polarized voting, it is possible over time for the at large structure to amplify the preferences of one voting majority over time, thereby canceling or diluting or thwarting the voting preferences of another group over time.

Q I see, sir. A And this is the effect of dilution in an at large structure.

Q Dr. Cotrell, have you formed an opinion on whether or not the vote of black citizens in Escambia County and Pensacola is diluted in the three jurisdictions we asked you to study? A Yes, I have. I've formed the opinion that racially polarized voting exists in the City of Pensacola, in the School Board, school district, and in Escambia County.

Q Okay, sir. A And also I reached the conclusion that dilution exists also in those three jurisdictions.

[10] Q Okay, sir. Dr. Cotrell, would you please address each of those jurisdictions separately and tell us what the basis of your opinion is for each one. Perhaps, shall we start with the county? A I was, well, I was - it's fine if you want to start with the county. I was going to start with the city.

Q The city, okay, sir. A Yes.

THE COURT: It suits you, doesn't it, Counselor? Go ahead.

THE COURT: MENEFEE: Yes, sir.

THE COURT: Go ahead with it the way you have it set up. Start with the city.

Q If you'll start with the city, Dr. Cotrell. A I examined, to reach my opinion I examined the regression analyses and for the city those included a great number. They included all races wherein blacks ran. I think there were some twenty races and eleven black candidates. It also included all winners in city elections in the period, in the seventies, the decade of the seventies, and it also included a random selection of winning elections or winners, rather, during the decade of the sixties, excluding, of course, in this sample, the black, the cases wherein blacks were candidates for office which had already been covered previously. I also examined raw voting returns [11] and attempted through background interview sources to learn as much as I could about the City of Pensacola and its politics and the electoral dynamics here. I found in the regression analyses that consistently the phenomenon of racially polarized voting existed. It existed at a point higher than the statistical .50 "r" squared, which means

that half of the variance in the dependent variable that the candidate receives is explained by the factor of race. But that wasn't enough. You have to look at raw vote returns. You see, before you could reach a conclusion of dilution you would have to, of course, have extant racially polarized voting but you would also have to have evidence of a submergence or a canceling of the voting preferences of, in this case, the black citizens of Pensacola. And so to do that I supplemented the regression analyses, and if the court would permit I would like to summarize some of that raw vote analysis, and this is what I did. I looked at 95 percent white-registered voter precincts in the city. They range from, in number, of, twelve to fifteen. And I looked at 95 percent black voting precincts, black-registered voter precincts in the city, and I attempted to see if in fact in these highly concentrated areas if we had a situation where consistently and over time blacks were voting one way and whites were voting another. And also I looked at the number of people who were elected to [12] office. I found that looking at the seventies in this analysis, for example, in 1971 in the city my records show that four blacks, Mr. Bill Marshall, Mr. W. F. Hendrieth, Mr. Henderson and Mr. Hollice Williams, ran for office. And looking at those -

THE COURT: This is all in 1971? A Nineteen seventy-one, Your Honor. No, this is not. It goes on through to '77, Your Honor.

THE COURT: That's what I was thinking. You start with '71. A If you want me to summarize this entire thing quickly.

THE COURT: No, you referred to 1971. You just confused me. A That is this race, and I could go -

THE COURT: Well, you just go on. A I want to give the court the idea.

THE COURT: I just misunderstood your testimony. I thought you were saying there were four blacks that ran in 1971 and I didn't remember that. Were there four blacks that ran in 1971? A Well, I think that Mr. Marshall, Hendrieth, Henderson and Williams did, yes, sir.

THE COURT: All four of these ran in 1971? A Yes.

[13] THE COURT: But that was not in the city race. A Yes, sir.

THE COURT: It was in the city race?

MR. MENEFEE: Yes, sir.

THE COURT: I'm sorry I stopped you. You go right ahead. A Yes, sir. I found that there were twelve ninety-five and above registered white voter precincts. This gives you a really good idea because there are very few black voters in those precincts. It gives you a very good idea about how the white voters in these residentially concentrated precincts are voting and viewing the black candidate, and I found in '71 that Mr. Marshall, Mr. Hendrieth and Mr. Henderson carried absolutely none of those. By carrying I mean 50 percent. I found furthermore that in that year those precincts alone, those twelve alone constituted 42 percent of the total vote cast in the election. And I found that the only black candidate who scored appreciably well in those precincts was Mr. Hollice Williams and he carried eleven of them.

Q Eleven of the - A Eleven of the twelve, yes.

Q Okay, sir. A I found that with an exception of Mr. Henderson that the black precincts, the 95 percent

registered black [14] precincts, scored for, voted for the black candidate at a range of from 65 to 77 percent. Henderson received a near majority but not a majority in that case. Then I looked at the next elections, which were '75, where blacks were running opposed. Obviously if they're running unopposed it doesn't affect this analysis. And I found in '75 that we had two blacks running for office, Mr. Hollice -I'm sorry, three blacks: Mr. Hollice Williams; Mr. Brewer, who testified yesterday; and Mr., Dr. Donald Spence. And we found that Mr. Brewer carried none of the fifteen precincts, found that Mr. Williams carried thirteen of the fifteen precincts, and that Mr. Spence carried six of the fifteen precincts. The ranges of support for Mr. Spence, Brewer and Williams ranged from 71 to 97 percent in the black precincts. Now I would like to add here also we have correlations, "r" squares.

THE COURT: The range in the black precincts, will you give me that. A Oh, yes, sir. They ranged from 71 to 97 percent for the black candidates. Brewer received the lowest, 71. Dr. Spence received 97 percent. Mr. Hollice Williams, 96 percent. Then in 1977 there were two candidates, my records show, Mr. W. F. Hendrieth again and Mrs. Ruby Gainer, and there were fourteen of the oh, I forgot one thing on '75, that in '75, 50 percent of the [15] vote in the total votes cast was a product of those, at that time, fifteen precincts.

Q The white precincts? A White precincts, right. Then in '77 I found that Mrs. Gainer carried one of the ten fourteen white-registered precincts while carrying 93 percent of the black precincts, that were 95 percent or better registered black voters. Mr. Hendrieth carried none of the fourteen white precincts and carried a majority of 54 percent of the black precincts. I had to examine these data



closely because obviously when you have the election of a black candidate then you've, it's difficult to allege that there's dilution because the preference of the blacks, there may be polarization but the preference of the black community and enough of the white community is elected, and what is striking here is the fact that the only people who have really, the only person who's ever carried all of the, I'm sorry, a majority of the white precincts, has been Mr. Hollice Williams. And the only other person who is even on the scoreboard, that is, carrying six of fifteen white precincts in 1975, is Dr. Donald Spence. And although one could not say that there is dilution in the Spence and in the Williams elections one could say and has to say that certainly the fact that these two individuals were the only two introduced into the political system, into election, by [16] an all-white Council, would have in impact.

Q Dr. Cotrell, while you're there would you please explain what significance being introduced by, I think you said all-white City Council, what significance is that to you on your opinion? A Voters -

MR. CATON: Your Honor, if I could interpose an objection here, at the time Dr. Spence was introduced into the City Council, appointed to the City Council, he was not appointed by an all-white Council. Hollice Williams was a member.

THE COURT: He did not say he was appointed by the Council. He said introduced into it by an all-white Council. A Yes, I understand the distinction and I meant introduced, Your Honor, instead of voted on by then Hollice Williams in '73. I appreciate the distinction.

Q Dr. Cotrell, when you say introduced, is that synonymous with being appointed to office? A Well, I



mean you're appointed and these precincts which in the city in the seventies, again nearly all white, overwhelmingly voted against black candidates, apparently took cues in these instances and voted with the black precincts. Then I think I gave the court the '77 statistics. And I would point in 1977 60 percent of the [17] total votes cast in the city came from the then fourteen predominantly white precincts.

THE COURT: You say 60 percent? A Sixty percent, Your Honor. So we can see a couple of things from this analysis and it influenced me along with the regressions in reaching my conclusion concerning dilution. We can see that a preponderant vote in city elections is coming from the preponderantly white-registered precincts, and we can also see that these precincts, a majority of the time, to not vote at all with black candidates. Some of the time they vote, well, a black candidate can carry one or a black candidate can carry maybe six of fifteen, but the only person, Mr. Hollice Williams, who has carried a majority of these precincts and better, has been Mr. Hollice Williams.

Q I see, sir.

THE COURT: Are you about to finish on the city part of it? A On the city, yes, sir.

THE COURT: I was wondering. It's about time to take a break. If he's at the conclusion perhaps we ought to take about a ten or fifteen minute break. You'll be on the stand for, you'll have him, he'll be with us another thirty or forty minutes, at least, I'm sure.

MR. MENEFEE: We have a few more questions, Your Honor, [18] yes, sir. Yes, sir; I'm sorry.

THE COURT: We're going through the county and other things. What was it, Doctor? A Should I leave this stuff up here?

THE COURT: It will be perfectly all right. We'll take about a ten or fifteen minute recess.

(Recess)

## DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q Dr. Cotrell, we were discussing the basis of your opinion as to the judgment you reached on this city government, City of Pensacola elections, and you mentioned previously the factor of the City Council approving or appointing Mr. Hollice Williams and Mr. Spence, Dr. Spence, and you used the term it was a cue. What do you mean? What effect from the standpoint of behavioral science does this type of approval have? A There are a group of political scientists and social scientists, I think who would have us believe that the electorates are fundamentally not very responsible, not very intelligent. That isn't my point of view. But we also, when we judge intelligence of electorates, have to look at, distinguished between general symbols which they recognize, and specifics.

Q Such as? [19] A Well, if you ask the electorate at any given time what the President or the Mayor's position is on March 23rd, on this position, you might be disappointed. But V. O. Key, Jr., a venerable political scientist, wrote a book just at his death, *The Responsible Electorate*, where he tried to show over a long period of time electorates are aware.

THE COURT: They are what? A They are aware.

THE COURT: All right, go ahead. A And what I mean by cue is that leadership, visible leadership in the community, political leadership, of course, we're speaking of that in this case, socio-economic leadership, of course, visible people in the community, people who have in-

fluence in the community, by their actions and by their endorsements and by their policies can tell voters, not tell voters but can give voters cues, directions and leanings. When I look at these statistics, I look at Mr. Williams, Henderson, Hendrieth and Marshall in 1971 and I have to ask why did Mr. Williams receive, win eleven of these predominantly white-registered precincts and the other blacks none. I have to ask that question, and one very plausible explanation to me is the fact that, unlike the other three, Mr. Williams was introduced by, in Mr. Williams' case, an all-white Council, and there is a degree [20] of acceptability associated with him that might distinguish in independence and so on from the other three black candidates. That's what I mean.

Q Thank you. Now, Dr. Cotrell, would you please turn your attention to the next jurisdiction and tell us what was the basis. Does that conclude your basis of your opinion as to the city? A Well, of course entering in all of these opinions are the testimony I've heard there, but also the interviews, the informal interviews, but those are principal bases of the opinion, yes.

Q Okay, would you turn your attention to the next jurisdiction. To the school district.

Q Okay, sir. A The School Board elections.

Q What was your basis for your opinion as to the School Board? A In the School Board cases I think I have on record the number of elections that were studies, but fundamentally all races wherein blacks ran and all races in the decade of the sixties and the seventies wherein there were winners.

Q You're referring to the regression analyses? A The regression analyses, of course, were [21] run on all

of those races, so we have "r" squares or race as a factor, influential factor, predominant factor, in -

THE COURT: You used the same approach here as you did in the city? A Exactly, Your Honor.

THE COURT: And that would be true when you get to the School Board? A That is correct.

THE COURT: All right, sir, go ahead. I mean the County Commissioners, because you are now on the School Board. A Yes, sir.

THE COURT: The same approach all the way through, is what you're telling us. A Yes, sir.

THE COURT: All right, sir, go ahead and tell us. A I found racial polarization, but as I told you earlier, racial polarization doesn't always mean dilution. I found in the School Board races then, using the same kind of analysis except for the wider Escambia County, that is, the predominantly white-registered, predominantly black-registered precincts, I found that in 1974 where Mr. Elmer Jenkins ran in the School Board race that there were sixty-nine predominantly white precincts and he was able to carry nine of those at a majority. Those precincts cast out [22] of a hundred, I think a hundred-twelve or hundred-fourteen total precincts 64.5 percent of the vote, total votes cast. I found further that Mr. Jenkins was able to carry the black precincts, 95 percent black-registered and above, 96 percent. I found in the general election that year - again, Mr. Jenkins won the primary.

THE COURT: This was the primary? A This was the primary, Your Honor, and the general election he won.

THE COURT: Wait a minute. A The primary, and now we're going to the general election.

THE COURT: Who was his opponent in the primary? A His opponent in the primary was Sanders, I think.

THE COURT: He was a white man, black man? A He was a white man.

THE COURT: And he carried this even though he only carried nine of the sixty-nine? A He carried nine of the sixty-nine and won in a very close race, yes.

THE COURT: How could that be? There wasn't polarization; there had to be some crossover. A Yes, he had some crossover. In fact, Your Honor, the notion of racial dilution takes into account [23] crossover. I mean there has to, there's no suggestion -

THE COURT: Well, in this particular race this is evidence that polarization was not effective, that it was not there, that there was crossover voting sufficient to allow him to win the nomination. A Yes, sir.

THE COURT: Is that right? A Not in, I don't think at all in those precincts but he gathered enough votes in the rest of the city to do it in a very close election in the Democratic primary, yes, and what I'm saying, Your Honor, is that it's being offered into evidence because it is the overall pattern of those predominantly white and black precincts we're looking at that you make your judgment on.

THE COURT: You have to take in, when you get through with all these things, you have to take into account, as you're doing, the results obtained. A Whether he won or not, and he won in the Democratic primary.

THE COURT: He obviously had to have some white crossover votes. A Oh, undoubtedly, he had to have.

THE COURT: So when you talk about somebody voting by race, there were undoubtedly a good many white people in that race voting not by race but for the candidate.

[24] A That's clear.

THE COURT: All right. A That's clear. However, it doesn't disturb the pattern of the predominantly white precincts and the way they go in this election. They did cast a significant portion of the vote. In the general election Mr. Jenkins, this was against a Republican, Mr. Jenkins carried four of sixty-nine of the predominantly white precincts and 94 percent of the black precincts that were predominantly -

THE COURT: He carried only four of those predominantly white precincts in the general election? A And lost to a Republican, Your Honor. Then in 1976, the School Board race, this must be, yes, it's the primary, Mr. Jenkins carried none of the then sixty-three predominantly white precincts. They in turn accounted for 61 percent of the total vote cast, and he carried 93 percent of the predominantly black wards or precincts. And finally in primary one Dr. Spence, who was an incumbent on the School Board at that time, carried none of the predominantly white-registered precincts. Those precincts, those sixty-three, accounted for 72.6 percent of the vote, total vote cast. And Dr. Spence carried 93 percent of the black precincts. And finally in the School Board runoff, 1976, Your Honor, Dr. Spence lost that runoff by twenty-nine to nineteen thousand.

[25] THE COURT: But the vote in the primary was sufficient to put him in there notwithstanding the fact he car-

ried none of the white precincts? A No, he was able to get in the runoff.

THE COURT: No, he was in the primary one, wasn't he? A He got about fifteen thousand votes, Your Honor.

THE COURT: Did he lose in the primary or general election? A He lost in the runoff in the primary.

THE COURT: He lost in the runoff in the primary? A Yes.

THE COURT: He had enough votes in the first run? A There were three candidates, sixteen, fifteen and ten thousand distribution, roughly. He lost the runoff. He carried none of the sixty-three white precincts and he carried 98 percent of the predominantly black precincts. On that basis and on the basis that racially polarized voting exists in the School Board elections I have concluded that there is racial dilution of the vote in School Board races in Escambia County.

THE COURT: Let me ask you one thing about that. There was another candidate in that race who was on the School Board and who was running. [26] A Carl West.

THE COURT: And was also defeated. A Yes.

THE COURT: How did you compare his figures with Dr. Spence's? A I did not. I knew that he didn't get to the runoff.

THE COURT: You mean Mr. West didn't get to the runoff? A Yes. He carried approximately five or six thousands votes and he ran poorly, in other words.

THE COURT: Yes, but you stopped right there; you didn't compare it to see if there might be another reason



other than polarization, another factor entering in that particular election? You didn't go into that? A I, well, I eyeballed it, Your Honor, and that is not good enough for the record for this kind of a summary. I could find, Mr. West didn't, in these precincts -

THE COURT: White and black? A Well, the white precincts. Mr. West did not, I saw no discernible pattern by eyeballing; in other words a lopsided vote one way or the other.

THE COURT: He didn't take any of the white precincts, did he? A I don't think he carried any.

[27] THE COURT: You see, we have a particular situation. There's been some testimony about some things going on in the School Board before and that's the reason I was interested in seeing whether this might have been another situation that you haven't examined here that was in effect. I just wondered but what Dr. Spence may have gotten a total number, greater total number of votes than did the white man in this race. But you haven't gone into that? A I did not go into the West race other than what I indicated to you, yes, sir.

Q Dr. Cotrell, you did in the course, did you in the course of your interviews obtain information about problems relating to the School Board during the issues that were raised during that period of time?

THE COURT: I'm sorry.

Q I was asking Dr. Cotrell, part of Dr. Cotrell's research was through interviews in the community.

THE COURT: I see. A And I just wanted to ask Dr. Cotrell if that type of, that part of his research gave him some background as to the problems affecting the School Board at that time. A Well, of course -



THE COURT: He says he didn't consider it so I don't know it makes much difference, Counselor. He hasn't [28] gone into it. That's what I understood. He didn't go into these results to see if there were other factors that might have produced the vote. Isn't that what you said? A Well, I did the interviews, Your Honor. I have a background about a little about what that election contained in terms of issues and so on.

THE COURT: Did you get a basis for opinion from the interviews respecting it? A Well, my interviews revealed that the Rebel flag incident which has been much in discussion in the testimony in this court did racially tinge the air, the election. Indeed, when you raise the notion of a Rebel flag itself, I think you're talking about a symbol that can evoke a racial response. Yes, I considered that interview data. I'm going to the principal sources of my conclusion.

THE COURT: Well, do you have any opinion as to how it affected the race, elections, of these two men, these two people? A I think that in the case of, I can say in the case of Dr. Spence that School Board politics at that time were, the electorate was racially tinged, and his being black, his being as successful as he had been, yes, it would account in part for his defeat.

THE COURT: What about Mr. West? A I don't have an opinion on Mr. West. He was [29] an incumbent and I don't think that I got a pattern one way or the other on him.

THE COURT: Well, if race was in it, it seems to me that the converse, if race was there and it was defeating a black man, it should have helped the white man, both being incumbents. A Well, I don't know, Your Honor. The only thing, I wasn't able to determine whether Mr.

West rose as a visible spokesperson for the black community, as Dr. Spence is and was.

THE COURT: Well, he was a white person. A Yes, he was a white person.

THE COURT: Was he a visible spokesman for the white community? A Well, no, for black interests. I wasn't able to determine that. In other words if it could be determined that Mr. West was a visible spokesperson for the white interests or for black interests then I think that he might have had the kiss of death; the electorate would have swept him out of office.

THE COURT: But you would have to make that assumption; you can't A I don't know what is, I did not hear in my interviews that Mr. West was a spokesman.

THE COURT: You really didn't go into that situation. [30] We're right back into that. A Yes, sir.

THE COURT: All right, sir, go ahead. A And when the county -

Q Was there anything further on the School Board, the basis of your opinion as to the judgment you reached as to the School Board, or is that the conclusion? A That concludes it.

Q Okay, sir, now would you turn your attention to the county. A In the county I found in the, I think there were four races wherein blacks ran I found racially polarized voting meeting the statistical criterion, .50 "r" squared. I found a dearth of candidates, few candidates running, and I found some discouragement among blacks based on the interview data. I found some discouragement and based on testimony in this courtroom concerning a willingness to participate in county politics, or elections, I should say.

Q This is the first time you've mentioned the dearth of candidates. What do you attribute that to? A Well, as you know, there have been situations where in at-large election structures where no, the test of racial polarization in a sense can't be made because there are no black candidates or, indeed, a white candidate visibly identified with the black community, who [31] have run. And in that kind of situation you, to reach a conclusion of dilution you have to examine the full panorama of the election system and one of that, one of those indicators is the willingness, having a significant portion of the voters, one out of five of the voters in the election system of your race, anyway, the willingness of candidates to run.

Q Do you have an opinion why blacks haven't run recently? A Well, I think there is a discouragement. They feel it's futile to run. I think that the testimony in this courtroom reflects that, but more importantly or equally importantly to me, uniformly the black interview respondents indicated that, and then the actual statistics of people who have run indicate that. The last person to run, I think, was Mr. Dedmond in 1970, run for election. So, Mr. Menefee, what I'm suggesting is that any situation where you don't have, as a word, that many tests, we do have four and they indicate racial polarization, but nevertheless in these situations where you don't have that many tests you want to look at factors such as this because if candidates feel that it is not worth their while to offer themselves for election then in a sense this voter preference I spoke of is short-circuited before it even begins. That is, voters have no, they have no necessary preference if candidates of [32] their persuasion or race aren't offering themselves for office because of a feeling of futility.

Q All right, Dr. Cotrell, were there any other factors that you wanted to mention that constitute the basis of

your opinion as to the County Commission? A Well, I think I mentioned the regression analyses. I mentioned the interview data, discouragement factors, and the number of candidates. As much as I can recall at this time that's the basis of my opinion.

Q Dr. Cotrell, going on to a slightly different area, in this type of study that you conducted in Pensacola and Escambia County, is this consistent with methodology that you've used in other areas? And if so, would you explain about your methodology. A. If your question, Counselor, is, "Is this methodology similar to the other at-large jurisdictions I've been asked to examine," Yes, it is. It involves election analyses, it involves interviews, it involves ultimately a judgment concerning the effect that a particular electoral structure, the at-large structure, has on the preferences, voting preferences, of different groups.

Q Dr. Cotrell, Is there any, are there any factors that are particularly noteworthy about the study here as to what you've seen in other jurisdictions? A Well, these cases are becoming monuments of [33] evidence. I have some experience beginning, of course, with the early cases. The evidentiary basis is really strong and of course there were a hundred fifty regressions run. I have never been in a situation where that many regressions have been run on one locality.

THE COURT: You mean a hundred fifty were run here? A Were run here in Pensacola, and that's an extraordinary amount in the terms of methodology that's been employed. That's not to say in other areas that you don't run regressions and election analyses and look at as many races and factors as you can but I am saying that this is an extraordinary amount of analyses here.

THE COURT: Is that good or bad? A Well, I think it's a good thing if you want to reach a sound judgment.

THE COURT: All right, sir. Okay, sir. Dr. Cotrell, would you briefly address yourself to the helpfulness of the scatter diagrams, for example. A This, yes, the scatter diagrams I have used myself before in my research in directing master's these and so on. They are, to me they're a marvel. They tell a story by simply looking at them. You just can't escape the conclusion of polarization or nonpolarization from those diagrams. I'm not talking about dlution now; [34] I'm talking about polarization. From those diagrams. They're just irrefutable. And this in, well, in my experience this is the first time in a case that the scatter diagrams have been employed and I think they're a definite improvement.

THE COURT: You mean to your knowledge this is the first time they've been employed? A To my knowledge, that's true. Regression analyses, no, Your Honor, but scatter diagrams, yes. This is a further refinement of that technique, and again if the old proverb, "Every picture tells a story," means anything it means something in the case of those scatter diagrams and the phenomenon of racial polarization.

Q Dr. Cotrell, have you studied voter turnout in connection with your investigation in Pensacola and Escambia County? A Yes. I have looked at figures on voter turnout in the School Board and, well, the county and city.

Q All right, sir. Do you have any opinion as to the turnout of black voters in Escambia County and the City of Pensacola, and if so, would you express that? A Yes. Blacks tend to have a lower voter turnout in almost, well,

in all jurisdictions, city and county and school district, save in one instance, and that is when a black candidate is running and then the black turnout either equals in, say, select wards, predominantly white or black [35] wards, either equals or exceeds the white turnout. One interpretation, well, if you came into a situation that had no kind of a racial polarization in it, no kind of racial tinge in the electorate, well, you wouldn't expect to find that. You wouldn't expect to find uniformly blacks turning out equal to or better than another cognizable group; that is almost without exception. One thing, one explanation of that could be that blacks obviously strongly identify with black candidates who, at least interview sources say, I think it's common sense tells us, they feel they can represent black interests. Certainly we have had testimony here to that effect. And that at least of the whites running, at least of the whites running that blacks in Escambia County and Pensacola, judging the turnout stats, statistics, I'm sorry, feel that of those who ran they wouldn't be that well represented. There wasn't enough interest to turn out at a high rate for those whites running. We can conclude that. So in a sense I guess you could say that blacks, the inference from this could be that blacks feel that the, as represented by white candidates who have run, that they're not that encouraged or interested in participating in a system that apparently has, for them, has few rewards.

Q I see, sir. You earlier mentioned in connection with candidate recruitment or candidates offering themselves for office the discouragement factor. Does the [36] discouragement factor apply in the context of voter turnout, is that similar to this phenomenon you're discussing of the lesser black voting percentage when only white candidates are offering themselves? A Let's go back to this, Mr. Menefee. I understand your question. Let's go back to this

view that the voters are not as dumb as people would like to think. I don't think that voters are that ignorant. It seems to me that when a body of citizens feel that their vote or their participation generally is not going to result in a gaining of their act of voting, their preference, their mandate, if you wish, and this occurs time and time again, and then built on this is a, blacks in the South and in the Southwest, Mexican-Americans too, you have some shadow of history affecting participation rates. With these two things combined it's not unreasonable to find this, well, kind of ironical situation where blacks equal the turnout or better the turnout of whites when blacks run but then they appear to be, to have lower, at least the appearance of lower turnouts and so on, they appear to be indifferent or whatever to white candidates who are running; they appear to be indifferent in that sense to the system.

Q Okay, sir. A That's not an unusual explanation to me.

Q Yes, sir. Dr. Cotrell, I think you've [37] touched on it briefly in describing the basis of your conclusion for the County Commission. Would you address in a broader sense the problem of candidate recruitment in the black community, if you've studied that. A Yes, I have. There have been, I believe, twenty-seven, twenty-seven or twenty-eight black candidates over the period basically 1955 to 1977. I'll give or take a black candidate there on the twenty-five or twenty-seven, during the period '55 to '77. In all these jurisdictions. And there have been some approximately five hundred forty white candidates. Now, I'm not trying to get in any kind of, "The population basis is this for the blacks and therefore they ought to have that many people running." That's not what I'm talking about,



but I am talking about a reasonable assumption that when you have 33 percent of the population that is of one race and these people are citizens and have interests like any other citizens, demands and aspirations and hopes and so on like any other citizen, that you would, you could expect more people to run for office.

Q Okay, sir. A Now, that many out of five hundred thirty-eight over that period is just, well, it's just not that impressive.

Q Okay, sir. A I would like to add one thing, Mr. Menefee, [38] if I might, to a previous question, and it's simply something that I know this is an adversary proceeding but I feel it should be said. When I spoke of discouragement factor and I talked about peculiar situation of blacks, I think there is historical and some current basis for that, vis-a-vis blacks. But that is not to say that white citizens or brown citizens or red citizens or whatever kind of citizens, that is not to say that these, those citizens, don't also experience some of the same frustrations and sometimes lack of reception and response and so on, as black citizens. But what we are speaking of here is a question of degree.

Q Okay, sir, this frustration experienced by other citizens, let's direct your attention to the white electorate. You've heard comment in the courtroom, I assume, from the witnesses and the bench about low voter turnout in elections. Is this consistent and in line with the point you just made? Is that part of the discouragement or apathy factor? A Well, if your question is does the futility, electoral futility for blacks as expressed here and in interviews, as expressed by statistics in terms of recruitment of candidates, if that futility is a response to their view that they



couldn't possibly win or it wouldn't do much good to run, yes. But I want to make, I want to make this point. What's at issue here is a system. The crossover votes, and [39] they occur and I'm happy they occur, I know there are a lot of other people who are happy that crossover votes occur, the crossover votes show that some people are voting apparently on bases other than race. But what is at issue here is a systemic or system effect. We're talking about a peculiar situation, not that Pensacola or Escambia County is peculiar; I'm talking about the election system. The at-large structure has a tendency anyway to amplify the winning majority and if you place on that structure conclusive evidence of racially polarized voting and then add to it the factors we talked about, and we need not go back through it here, add to it this context where people are shut out, what you have is a systemic effect. It is the effect of a system and in my understanding that's really what I was asked to research and that's what these lawsuits are about.

Q Okay, thank you, Doctor. Dr. Cotrell, from your professional opinion and background would you address the question of the importance of having a black officeholder. What are the various factors that enter into the significance of blacks holding public office? A That's to me a very important question. I think that the literature in political science would suggest there are two general things that an elected official can do. His or her presence, black, white, brown, red or whatever, has a, can have a symbolic effect in the electorate. Symbolic. [40] And of course what they do actually is also a function of their being in office, what they do in terms of citizen demands and so on, what they actually do. Well, let's take the first portion first, the symbolic effects. Obviously it seems to me that it's just plain, common sense that a black in office is a

symbolic, has symbolic meaning to a black community. There's been much testimony here about the actual performance of two blacks, for example, who sat or are sitting on the City Council, but I don't think anyone's going to deny the symbolic effect.

Q Explain some more. What do you mean, symbolic?

A Yes, I want to.

Q Who is it symbolic to? A When you interview people, interview older people, and you ask them, here and elsewhere, you ask them, "Why do you run for office, Mister," it's unimportant who, it's another jurisdiction, another situation altogether, a sixty-three year old man who'd been a model citizen all of his life; he knew he could not win in that situation. It was impossible. It was impossible for a lot of reasons. He said, "I ran so that the younger people could see what it means to stand up and exercise your citizenship rights and, I think, obligation to seek to carry out your point of view at the hands of the electorate," and so on. That's one of the symbolic meanings. A second one would be obviously, maybe not so obviously, but blacks or whites, there is, there are cultural differences, and one of the symbolic effects has been shown in some instances to be that blacks would seek out other blacks for the demands, requests, grievances, initiation of policies and so on, and of course, turning to actual effects, the actual benefits of being in office, well, I don't, I don't want to take that much time. You have a person on the inside making the decisions from the respective point of view of a community or a group in a community, carrying out that point of view, making the decisions themselves. And also, I guess you turn the coin, you have someone on the inside, not on the outside feeling excluded.

Q Dr. Cotrell, backing up, I think one idea, you mentioned the symbolic representative serving the function of receiving requests. Do you mean beyond their actual jurisdiction, or where are you, I don't understand; what do you mean, receiving requests? All officeholders receive requests. A Well, you know, the court is going to have to judge the testimony presented here but there was a witness yesterday who, this is not uncommon, who spoke of, a black witness, Mr. Hunter, I think it was, the Human Relations Commission member, who spoke about receiving black requests all over the city and all over, all over, and this [42] is not infrequent with a minority legislator, be it Council-person or School Board member or state legislator. There are cultural factors involved and in some instances language factors. I'm not suggesting that here but I am in other areas.

Q So the system of single member districts for example, if one of the single member districts elected a black representative are you saying that blacks other than in that district would likely or possibly use that black representative as a funnel for their requests? Is that the type of situation? A Well, yes. I mean that's obvious.

Q Okay, sir. A You don't want to, you don't want to take away from the symbolic effects of having someone who a citizen identifies with up there successful. That's important. That's important to make this system run.

\* \* \* \* \*

[56] Q Doctor, let me ask you if you agree with a statement. The statement is, "The real question when investigating whether black political strength is diluted is [57] whether the racially polarized voting patterns

yield a large enough white vote for black candidates so that when added to black votes that amounts to an overall majority." A If you would add the phrase, "Contextually over time." That is, that judgment is made over a period of time; if it's not isolated to one election.

Q So in other words what we're talking about is whether black candidates are elected? In your view that's the essence of dilution? A No. These cases, Mr. Carr, are cases of voter preference and elections obviously, as I, my earlier testimony reflects, when you have a black elected to office you have a correspondence between the preference of black voters and if there's racially polarized voting, and a number of white voters, and it's not dilution. But winning an election alone is not the only question. The question is over time whether in a studied judgment voter preferences are submerged in a number of instances in the context of racially polarized voting.

Q I'm not sure I understand the difference, and back to my original statement, it seems like there's a bit of inconsistency there. I asked for your agreement as to whether it was true that the sine qua non of dilution is whether the racially polarized voting patterns yield a large enough white vote for black candidates that when added

[58] to the amount of black votes amounts to an overall majority. Isn't that the same as electability?

A Mr. Carr, I don't want to play cat and mouse with you. What you're saying is you put all that together and whether or not the person is elected. I mean if the black votes and enough white votes make a majority and it's the majority system you're talking about for election.

Q Okay. A And I said that election alone is an indicator, of course; it has to be.

Q What else is there? A Well, my earlier testimony just reflected that. The question, "What else is there," is the issue of whether or not the voter preferences over time have been diluted in the context of facially polarized voting and whether after a studied judgment over time you find that to be the case.

Q Well, then it's enough, it's sufficient to constitute dilution then if these three factors are present: one, an at-large electoral structure; two, the minority status of blacks; and, three, enough racially polarized voting so that blacks may not get elected over time? A Well, you left out all of the judgmental factors on dilution.

[59] Q Okay. Let me ask you then how you evaluate the question of the performance of the government, which bears certainly on whether or not preferences are submerged over time.

THE COURT: His test of dilution did not take into effect government action.

MR. CARR: That's what I'm trying to bring out, Your Honor.

THE COURT: To the extent it took in effect the system in force I guess, that's right; that's what you're getting to.

MR. CARR: I think that's exactly what I'm driving at.

THE COURT: Which would be an at-large system, as I understand. You go right ahead and ask him.

Q So in other words the responsiveness of the government really doesn't enter into your assessment at all? A Well, no, responsiveness or governmental performance, as political scientists call it, is definitely a symptom

or a political effect or symptom of dilution. In other words, if I may - if I may?

Q Please. A If you conclude that the voting preferences [60] of a group are diluted over time it would still remain to be proved whether or not a system, whether or not the effect of that dilution was poor performance or poor responsiveness to needs of those people whose voter preference had been diluted.

Q Well, if you had a government, let's assume in the hypothetical you had a government that was responsive to the interests of black and white citizens alike. Could you then have dilution? Could you say that those black voters' preferences were being submerged? A Oh, you could certainly say that black voter preferences were being submerged but I think you would say that the system generally, the administration, the entire system, was meeting demands of black people.

Q Thank you.

THE COURT: And you say that to that extent you could not say that there had been any dilution because regardless of who was there to legislate at least they were being represented and their needs being fulfilled? A To that extent, Your Honor.

THE COURT: That's what I get. A To that extent. I do want to stick with this notion of political effect and symptoms.

THE COURT: I understand.

\* \* \* \* \*

Q But the actual selection of the interviewees was done by the plaintiffs' lawyers? A Well, the more I learned about the situation, for example, I requested to see initially black candidates, to see white public officials, white candidates and so on. For example, I requested to see Barney Burks after I knew who Barney Burks was, the Mayor.

Q But the initial list, if you will, you said twenty or twenty-five people, the initial list was prepared and selected by the plaintiffs' lawyers? A Well, as I came over on several occasions to Pensacola and Escambia County and as I learned more about the situation I sometimes asked for additions to that list.

Q Okay. Now, when we broke for the noon recess we were talking about the inclusion in your analysis of responsiveness type information. We're clear on what we mean by that, right, the performance of government itself, and I think I asked you whether it was true that responsiveness essentially was a relevant question for the arrival at your conclusion. A I said that I had not examined any of the data which would lead to conclusions on responsiveness. I [63] do teach a graduate seminar in governmental performance.

Q So that must mean that responsiveness isn't a material factor to you in that analysis. The material factors are as you've stated them, whether or not there is so much racially polarized voting that over a time blacks' preferences, if you will, are submerged. A That's correct.

Q Okay. Now, in examining that question of whether black preferences are submerged is a material factor to you whether or not black citizens' votes have played an im-

portant role in deciding election contests even between two white candidates? A That can be an important consideration, yes.

Q So for example if there were a number of races in which the white candidate's victory margin in predominantly black precincts was greater than his overall margin that would be a material concern? A Well, that and a number of other factors, in order to arrive at the conclusion whether or not blacks were what you would call a swing vote.

Q Right. And looking at the data, what is your conclusion in the facts of the City of Pensacola and the Escambia County electorate? A My conclusion is that blacks are not a swing [64] vote or pivot vote.

Q Did you examine a race that involved Mr. Deese and Mr. Albritton for the County Commission two years ago? A Well, I'm sure I saw the returns, yes.

Q You examined all returns, that is, all races for the last ten or fifteen years? A Yes.

Q And you found no evidence that blacks were a swing vote? A I perhaps should explain that there are a number of conditions to Professor James Clubok's, C-L-U-B-O-K, I think it is, Clubok's, category. Professor Clubok categorizes Southern cities different ways. Without looking at the utility of his categorizations you would want to set a number of conditions that would have to be met to launch into a swing vote situation and one would have to be a kind of a consciousness or knowledge of the bargaining relationship that the black community is aware of and speaks about and in fact probably has leaders who in fact do bargaining to decide races between blacks and whites, and although we've certainly heard



testimony that white candidates do in fact seek, a number of them seek black votes, the interview data and my understanding of the situation is that blacks do not view themselves nor could they be viewed as a [65] bargaining group here in Pensacola city elections or in the county.

\* \* \* \* \*

[84] MR. MENEFEE: I agree, Your Honor. The point is that in the field of social science when you're studying demographic data to get "r" squares and regression analyses that are as extreme and as high as this it's a very unusual phenomenon and that was the extent of it, the only question I have.

THE COURT: If you want to ask him how the "r" squares in this case, if that's your purpose I'll let you ask that question.

Q Dr. Cotrell, are these "r" squares and regression analyses in this, that you've seen in this litigation, how do they compare to regression analyses and "r" squares that you see in social science data? A They are the highest in terms of the independent variable of race that I have seen.

MR. MENEFEE: Thank you, sir. I have no questions.

THE COURT: Does that get you on your feet?

MR. CARR: I believe I have a few questions on recross directed just to that.

THE COURT: Well, you did open up new area there.

#### RE CROSS EXAMINATION

BY MR. CARR:

Q Dr. Cotrell, is what you're telling us that Pensacola, Escambia County, electorate is the worst you've ever seen? A Not at all. I'm telling you that -

THE COURT: Go ahead. A I'm simply saying that the "r" squares, the statistical measurements which we have talked about in this courtroom for the last few days, are the highest in the independent variable of race that I have seen.

Q And in other pieces of litigation in which you have testified you haven't relied for your conclusion as to polarized voting on "r" square analyses, is that right? A Not all of them, no.

Q So for example in the Lufkin, Texas, case, *David versus Garrison* -

MR. MENELEE: Your Honor, I object.

THE COURT: You led into this and asked for comparison. Go ahead.

Q One could identify there actually how many black voters turned out to vote and how many black, how many votes the black candidate got and the number was sixteen hundred and sixteen hundred three? A Yes, there you had a very small East Texas City and identification of black voters there and white voters was very difficult and it was a very, very different situation from Pensacola.

Q And you found that that situation was diluting of the black vote?

MR. MENELEE: Your Honor, I object.

THE COURT: You're going too far. I thought you were asking, there were some cases you have testified there

was no racial polarization or rather you did not have sufficient data to verify polarization, isn't that correct? A All he asked, Your Honor, was regressions, and I haven't used regressions in all these cases. Some of, well -

THE COURT: Well, did you use regression in the Mobile case? A Yes, I did.

THE COURT: I thought you said that since there had been a lack of black candidates running there it was a difficult task. A Well, you know, it stands to reason, Your Honor, that is a different situation in terms of there were no black candidates running and the question there was a white candidate who was clearly identified with black interests who was getting, well, it was a very different electoral situation in the city.

THE COURT: And that of itself might account for a lower "r" two factor? A It could very well.

THE COURT: The fact this is the highest you've seen is not of itself of real significance, I assume, except that you think it establishes firmly racial polarization? That's all? A That's what I testified to earlier, Your Honor, and I thought I'd said that earlier.

Q And racial polarization does not in and of itself mean dilution? A That's correct, Mr. Carr.

THE COURT: Now, that was covered about four times. Thank you, Mr. Carr. I believe we're finally going to let you go. Is that correct?

MR. MENEFEE: Judge, I wouldn't risk another question. We'll be here all afternoon.

THE COURT: He's excused from further attendance.

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## TESTIMONY OF JAMES J. REEVES

[1014] CROSS EXAMINATION

BY MR. MENEFEE:

Q. Mr. Reeves, my name is Larry Menefee. I'm an attorney for the plaintiffs in this case. Going back, did you mention, I wasn't able to take them all down. You mentioned some of the civic clubs you were active in. I know the Rotary. Which are some of the others, I believe, sir? A. Pensacola Jaycees.

Q. Any others? A. Rotary Club.

Q. Okay, sir. A. Chamber of Commerce.

Q. Okay, sir.

THE COURT: He had a list if you want to see it.

MR. CATON: Yes, sir. Would you like to see the list?

Q. Are there any others? Are those the primary ones? A. Yes, sir.

Q. Okay, sir, what church do you attend? [1015] A. St. Christopher's Episcopal.

Q. Okay, sir. Mr. Reeves, is St. Christopher's Episcopal Church predominantly black? A. No.

Q. What would be the racial composition? A. It would be heavily white.

Q. So it is predominantly white? A. Oh, yes, no doubt about it. There is a black Episcopal Church, as I recall, that maybe disbanded at one time and some of the members went into the church.

Q. Okay, sir. A. As you know, Episcopal Churches are a lot more rigid as far as ceremony than some of the other denominations.

Q. Yes, sir. Now, who is, is Mr. Barney Burks presi-

dent of the Chamber of Commerce at the present time?

A. Yes.

Q. Are you familiar with the board of directors of the Chamber of Commerce? A. Not really, I mean if you asked me to name ten of them I couldn't. I probably would know all of them.

Q. Do you know about how many are on, how many members of the board of directors there are, what number? [1016] A. What number of the board of directors? No, I do not.

Q. Approximately? A. No.

Q. What's the name of the Rotary Club you're a member of, please, sir? A. Gulf Breeze Rotary Club.

Q. Is it a predominantly white club? A. It is an all-white club but not because of —

Q. By custom? A. No, it's because it primarily is in, it's a brand new club but it would certainly admit black members if there were members who met the qualifications.

Q. I understand. So it's not by rule or regulation? A. It is white. All the members are white but any person who met the qualifications to be a member would be a member and would be welcome in my estimation.

Q. All right, sir. Could you tell me very briefly what type of law practice you're in? What sort of clients do you serve? A. I'm primarily in corporate, finance, type practice.

Q. All right, sir. A. Office practice.

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## [1078] TESTIMONY OF HOLLICE T. WILLIAMS

Q. And how long were you in office before you had to run for election? A. Approximately nine months.

Q. Let me ask you this, Councilman Williams. If you had not been appointed. Well, let's ask about that first election. Let's ask about that election. Could you tell us if you had any intentions of not running for election or did you always assume that you would when election time came in '71, or what was that? A. Well, I did have my fears of running after I had gotten on but then I felt like I was comfortable in doing the job so then I felt like I could run. Now, I felt like it was going to be a very difficult task to do but I did and I won.

Q. Could you tell us, how many opponents did you have in that election? A. Two.

Q. Two, and what was the vote? A. Well, I carried practically all the precincts in the first primary. I don't recall exactly how many it was but I won in the first primary.

Q. Would it be a fair assessment to say you lost two precincts? A. Two or three at the most.

[1079] Q. Do you recall that? A. Yes.

Q. And won all the rest of the precincts? A. Right.

Q. Tell us about your campaign. Did you feel that since a white council had appointed you that you didn't have to campaign for white votes or what was your feeling about it? A. No, on the contrary, I felt like I needed to campaign as hard as ever or harder. In fact I feel that my campaign went probably harder in the white community than it did in the black. I did campaign all over but I did campaign very hard and did — excuse me.

Q. Excuse me. Go ahead, sir. A. Well, to be honest with you, I was reluctant, really, to run, because I felt like I couldn't carry the white vote.

Q. So what did you do in order to get that white vote? A. House to house.

Q. In the white areas? A. Yes.

Q. Such as what? East Pensacola Heights? A. Yes, I did go in East Pensacola Heights. I went in Cordova.

[1080] Q. Cordova Park? A. Most every area. I went all over the City of Pensacola, black and white.

Q. And did you go and knock on doors? A. I knocked on plenty of doors, yes.

Q. How about knocking on doors in the white community? Did you feel a little apprehensive about that? Had you ever done that before? A. No, not to that extent. Now, I was reluctant really to knock on white people's doors to try to get in. I didn't, I didn't know how I would be accepted.

Q. But you did it anyway? A. I did it anyway.

Q. I guess the results speak for themselves.  
A. Well —

THE COURT: What kind of reception did you meet with, Mr. Williams, as you were going to those white houses?

A. Well, some, I was just like anything else, turned down. Others, I was well accepted. I probably was asked more questions than the normal candidate would have been asked.

THE COURT: Did you have the same sort of reception in black areas, though? Some turned you down [1081] and others asked you questions?

A. Yes.

THE COURT: Was there any difference in the reception accorded you?

A. I was more at ease in going to the black ones but I did have some people to not vote for me. I was hand picked, they said.

Q. Some people said that?

A. Yes.

Q. Councilman Williams, looking back over the time that you were appointed first and then ran for election, do you think the fact that you were appointed — let's say you were not appointed first. Let's say you had run that campaign before you were appointed for the city council. How do you think you would have done?

A. Well, honestly, prior to being appointed I did not ever dream of being in politics but I believe that Hollice Williams could have ran, had I been interested.

Q. Could have run or could have won?

A. I believe I could have won.

Q. You believe you could have won even though you hadn't been appointed to the council first?

A. Hollice Williams, yes.

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[1089] Q. What about in 1975? That was your other contested race. A. No, I don't remember the exact names offhand. If they were called I could probably recall the names.

Q. Do you know if any of those opponents had ever run for public office before? A. I'm not aware.



Q. Okay, sir. A. At one time one of them was a supporter, I believe, of somebody who was either in the Senate or in the House of Representatives and had worked in politics before and I'm trying to think of his name but I can't recall his name.

Q. He had been a supporter, you think? A. Well, he had worked with one of the senators or one of the representatives in his office.

Q. But had not actually been a candidate? A. Not to my knowledge.

Q. Okay, sir. Mr. Williams, did I understand you to say that you were, that you approached two members of the YMCA concerning the appointment to the city council? A. Yes.

Q. One was Mr. Paulk and who was the other [1090] please? A Frenkel.

Q. Frenkel. Do you remember your deposition being taken in connection with this litigation on, I believe it was August 2nd, 1977? A. Uh-huh.

Q. I think my partner, Mr. Blacksher, conducted that deposition. A. Yes.

Q. I would like to read a question and answer from page ten of that deposition: Question, "You were approached by a member of the city council, is that what you mean?" Answer, "Right." Question, "Which member was that?" Answer, "Paulk, W.J. Paulk." Did he approach you or did you approach him? A. No, I made the approach.

Q. You approached him? A. Yes. I said that and I was wrong.

Q. I see, sir. So what you said in your deposition was incorrect?

THE COURT: He said that that was wrong. He says that was wrong.

Q. I'm sorry. Mr. Williams, do you have an opinion whether or not the vote in Pensacola is, tends to polarize along racial lines for black and white candidates [1091] when they're running for the same election? A. I have no opinion.

THE COURT: You have no opinion one way or the other? A. No, sir.

Q. Do you remember whether you had an opinion in August of 1977? A. No, I don't.

Q. In that deposition Mr. Blacksher asked you, "Is there still some —

MR. CATON: What page are you on, please sir?

Q. I'm sorry, sure, page 21.

MR. CATON: Thank you.

Q. Line 14. Mr. Blacksher asked you, "Is there still some racial polarization in your opinion?" Answer, "Yes." So you had an opinion at that time.

THE COURT: Do you remember that statement, sir?

A. Yes, I remember that statement, sir.

THE COURT: Well, you had that opinion at that time. That was the opinion you had at that time but you don't have it today?

A. If I was understanding the question, he was asking me at that time was there any racial problems needed to be corrected.

THE COURT: No, no. Read that thing again.

[1092] Q. Yes, sir. "Is there still some racial polarization in your opinion?" Answer, "Yes."

MR. CATON: I think the way he clarified is he thought he meant problems at the deposition.

THE COURT: I tell you what, Mr. Caton, we'll let him do the talking instead of you, don't you think.

MR. CATON: Yes, sir.

THE COURT: All right, sir. Mr. Williams, you heard the question.

A. Yes, sir.

THE COURT: And it was the same question, so far as I can tell, that was asked you today.

A. Yes, sir, this is true. And I think when he used the word "polarization" I alluded to something else and wasn't clear.

THE COURT: What did you think he meant by it today?

A. Well, I thought maybe today he meant when he asked me an opinion whether or not that there was bloc voting, so to speak, as far as black and white is concerned.

THE COURT: But you didn't understand that other question? A. To that extent.

THE COURT: All right, sir.

Q. Mr. Williams, would it help refresh your [1093] memory if I backed up over and read some of the earlier questions starting at the top of page 20. Question, "In your opinion or in your experience have you observed that when a black person is running for office in Pensacola or in the county that the vote tends to polarize along racial lines with the white voting for the white candidates and the black in large measure voting for the black candidates?" Answer, "At one time that was true." Question, "When you say at one time, give us the time you're talking about."

Answer, "I think at one time we had people who claimed they could deliver votes, both white and black, to the polls. It was being polarized then just the black and white candidates each to his own." Question, "Are you talking about the time now when Mr. Taite was running?" Answer, "Yes, sometime during that time also, I imagine." Question, "And there were folks who thought they could deliver the vote, either black votes or white votes?" Answer, "Right." Question, "Were there ballots circulated among the electorate, one among the black, one among the white?"

THE COURT: Mr. Menefee, let me interrupt you. You're now talking about a period of time sometime prior to August, 1977, in your questions to him.

MR. MENEFEE: Yes, sir.

[1094] THE COURT: He limited it and said at one time there was, so so far you're not really coming up with anything helpful to this question here.

MR. MENEFEE: Right, yes, sir, except that he conceded there was a polarized vote.

THE COURT: It's clear that in that deposition he was saying at one time there was a polarized vote. He also said that in this other one when he got there that he thought you meant something else. If you read the whole thing he might have been talking about the prior period. I think you've carried this far enough, Mr. Menefee.

MR. MENEFEE: May I try to bring it up to date, Your Honor?

THE COURT: Beg pardon?

MR. MENEFEE: May I try to bring it up to date?

THE COURT: If you want to ask some more questions.

Q. Mr. Williams, do you believe there is still some polarized vote today when a black candidate runs and white candidate runs? A. I have no opinion.

THE COURT: What did you say, Mr. Williams?

A. I have no opinion.

Q. Mr. Williams, on page 43 of your deposition, this is, let's see, the question begins —

[1095] MR. CATON: Your Honor, if I could interrupt at this time, I really don't know what the point is, whether Mr. Williams' opinion would have any probative value anyway, but I think one thing, if I could, just this one other point, Your Honor, there's been differences of opinion between plaintiffs' own witnesses as to what polarized voting and polarization means.

THE COURT: Mr. Caton, when we need some help from you in connection with his testimony I'll let you know.

MR. CATON: Yes, sir.

THE COURT: We're trying to go through a deposition and take statements to see about impeachment. I don't want you interrupting with those kind of comments again during this period. Do you understand what I said?

MR. CATON: Your Honor, I —

THE COURT: If you did, you may sit down.

MR. CATON: Yes, sir.

THE COURT: Do you have something else in there that you think — you know the rule on impeachment. I don't want you reading things, misleading the man or anything else. If you have something there you believe is contrary to

the statement he has made today, you may read it. Otherwise, don't read it.

MR. MENEFEE: Your Honor, yes, I do have some-  
[1096] thing that I think is contrary.

THE COURT: Read it out and let's see what it is.

MR. MENEFEE: I will read the immediate question and answer and go back further, if necessary. "You mean that he was defeated because of the polarized vote to some extent?" Answer, "I can't say it was polarized but it could have been, it still exists, period."

THE COURT: Do you recall that statement, sir?

A. I don't remember that. No, I don't recall saying it.

MR. MENEFEE: I'll be glad to back up.

THE COURT: Bring it up to him and let him look at it.

MR. MENEFEE: Yes, sir.

THE COURT: This is on page 43 of this deposition?

MR. MENEFEE: Yes, sir, page 43.

THE COURT: What did you mean by that statement?

A. Well, I don't know what, I don't know why I said it still existed. I really don't. I thought I was clearing myself up when I said I don't know if it was polarized.

THE COURT: Well, it sums up to this, and we have spent a long time with it. You have said now you have no opinion respecting racial polarization in this city [1097] and county at the present time, and does that mean in present elections you don't know whether blacks vote for blacks as opposed to whites voting for whites?

A. That's what I'm saying.

THE COURT: You don't know about that today?

A. No, I don't know that to be true.

THE COURT: Well, have there been any change in the situation so far as you can tell since you gave this deposition in August of last year?

A. Change in voting, people voting?

THE COURT: Any change in people's voting habits where they vote by way of race or not?

A. Not to my knowledge.

THE COURT: Mr. Menefee, I think you might as well proceed, don't you?

Q. Thank you. Mr. Williams, had you been politically involved prior to your appointment to the city council?

A. If you mean politically involved, if you mean in council, government, anything of this nature, no.

Q. Had you ever worked in any campaigns?

A. Not just work in a campaign. People I liked, to help to get votes I would get out and ask my friends to vote for them, that nature, but not, say, work.

Q. Had you ever run for office before? [1098] A. No, sure hadn't.

Q. I see. What was your — okay, sir. Mr. Williams, do you think that equal employment opportunity is an issue of concern in the black community? A. Will you repeat that so I understand what you're saying?

Q. Yes, sir. Equal employment opportunity, is that an issue of special concern in the black community, to do away with job discrimination on the basis of that?

A. I'm sure it is, yes.

Q. And what measures have you taken as a member of

the city council to alleviate any job discrimination in the City of Pensacola? A. One of the things I have just recently done was to send back the affirmative action program to be reworked. This is one of the vehicles, I think, which will help in that area. Also just recently I asked that, concerning the Civil Service ruling and what have you that was being passed on, I tried to get that cleared up where it would be more equal for blacks to get their jobs by getting clarified the percentage of oral as well as written examination that would be taken in that particular situation.

Q. Mr. Williams, what about in the private sector of employment, that is, private industry, jobs [1099] and such, in the City of Pensacola? What efforts have you sponsored on the city council to improve employment opportunity or to provide equal employment opportunity for all citizens? A. I really don't understand your question, how you've phrased it there. Give me an example, if you will.

Q. Well, any local industry here, maybe a local office supply business, for example. Have you sponsored any efforts in the city council to enact maybe a local ordinance prohibiting job discrimination in employment, in businesses operated in the City of Pensacola? A. I haven't introduced anything of that nature to private industry. However, in private industry I have gone to intercede for blacks who was applying for jobs to make it known that I felt that they should have a job because, they should have that job because they was qualified as anyone else. That's on a one to one basis.

Q. Do you think the city council should enact such an ordinance locally? A. I don't know whether it can or not.



Q. Yes, sir. You could consult the city attorney couldn't you? A. Yes.

[1100] Q. You have access to Mr. Caton? A. Oh, yes.

Q. What about an ordinance dealing with fair housing in the private sector, that is, allowing blacks, prohibiting discrimination in the sale or rental of apartments and houses in the City of Pensacola? Have you considered that? A. Some oh, I suppose three or four years ago, I personally checked on an apartment house in West Pensacola, East Pensacola Heights, to find out why blacks couldn't take advantage of rentals in that particular area. I have not introduced anything like that to the council but these are the kinds of things I think sometimes on a one to one basis, individual basis, we as councilmen do.

Q. Okay, Mr. Williams, let's see, you've been on the council eight years approximately now. Have you sponsored or nominated blacks to the various boards and committees of the city? A. In some cases, yes.

Q. And on approximately how many occasions is that, please, sir? A. It would be hard for me to say. I know every time an opportunity presented itself that I would try, if I deemed a black could fill that position, then I [1101] would bring him on in.

Q. With what success? A. I think I've had some degree of success. I haven't been able to win them all but I've been able to get some in positions.

Q. Well, would you say 10 percent or 50 percent? A. At least.

Q. Fifty percent? A. No, I couldn't say fifty. I'd say ten.

Q. Do you know many qualified black citizens who are willing to serve on civic boards and committees?

A. If I understand the question, and I keep getting mixed up on your qualifications on different things, different people are qualified for different things.

Q. Yes, sir. A. Yes, sir, and I do think that we have a goodly number of black people in the area that can fill, qualify in certain positions, if the opportunity presents itself. Yes, I feel that.

Q. Why aren't more of those black citizens serving on the various boards and committees? A. Because they haven't been appointed.

Q. Sir? [1102] A. They just haven't been appointed.

MR. MENEFEE: Okay, sir.

THE COURT: Well, were they considered for appointment?

A. Beg pardon? In some cases, yes.

Q. And were turned down?

A. Yes. Well, usually the council procedure is by vote and if a name is submitted, most all names are considered and in many cases some did get it and some didn't.

THE COURT: There were some whites turned down also, I'm sure.

A. Yes.

THE COURT: Nonetheless it remains over the period you've been there —

A. Yes, sir.

THE COURT: A great many more whites were appointed than there were blacks.

A. Yes, sir.

MR. CATON: Thank you, Mr. Williams.

THE COURT: Cross examination? Or, no, you were on cross examination. Redirect?

MR. CATON: No further questions, Your Honor.

THE COURT: Mr. Williams, you're excused from further attendance. Thank you for being here.

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## TESTIMONY OF GOVERNOR REUBIN ASKEW

[1414] REUBIN ASKEW, called as witness by the defendants, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. CATON:

Q. Your Honor, I present to the Court Governor Reubin Askew. I don't have time to go in all the Governor's qualifications. As the Court is aware, he is currently Governor of the State of Florida and has been. This is his second term. Governor Askew, were you a member of the legislature in the year 1959? A. I was.

Q. And what position did you hold? A. I was a member of the House of Representatives from Escambia County.

Q. Escambia County? A. I was elected in the general election of November of 1958.

Q. This was your freshman term then? [1415] A. That is correct, my first session of the legislature.

Q. Governor, do you recall back in 1959 a bill or change that was presented to the delegation by either the city council or some other group, the gist of which was to change the method of electing the city councilmen? A. Yes, I do.

Q. At my request have you done a little bit of research in this field to try to refresh your recollection even more? A. Yes, I have, because, quite frankly, when I first discussed it with a Dr. McGovern from the University of West Florida, who called me —

Q. He called you first? A. I believe he was the first one who called me. I discussed it and I didn't, at that time

I really didn't have that much independent recollection although I did remember the change and remembered some of the circumstances of the change. Since that time I have refreshed my memory. But my memory still is not substantial, independent of that which I've used to recollect.

Q. I see. And have you reviewed some newspaper articles from that period? A. Yes, I have.

[1416] Q. Do you have any with you? A. I have one newspaper article because Dr. McGovern asked me the question of whether I was asked to introduce the legislation and my answer to him was that I was fairly confident that it had to originate from the city. In my freshman session of the legislature we did not really have a system of local hearings that we later perfected when I became a state senator in 1962, and the way it was handled, frankly, was a great deal more informal than the public hearings that I later established because I had a policy when I became senator that we would not take any action on anything unless a public body asked us in a public meeting for that. And refreshing my memory through the newspaper, the city council did vote unanimously for several changes and requests of the 1959 session of the legislature, one of which was for this change in the election process, a meeting that took place, according to this newspaper article, on April 30th, 1959, by Paul Jasper of the *Pensacola News-Journal*, and which it indicated that, "The Pensacola City Council this morning unanimously endorsed proposed legislation which would create extensive changes in the operation of the city government." One of the items in this news article is that they also approved a change in the city charter which would allow all [1417] candidates for the city council to run at-large instead of from the individual district and

to elect two councilmen from each district. That was the change and also the bill that was introduced became law without the Governor's signature on June 20th, 1959, which would have indicated that it was filed and passed at the very end of the legislative session, which was not uncommon at that point. Almost all local legislation becomes law without the benefit of the signature of the Governor.

Q. Yes, sir. A. In Florida a piece of legislation, opposite the federal government, there's no such thing as a pocket veto. There are so many days after which if the Governor fails to veto it, it automatically becomes law without his signature, and that is the process that is used in Florida.

Q. Yes, sir. Your Honor, at this time I would like to add this newspaper article dated April 30th, 1959, entitled "Legislature lifts ad valorem limit," and it also discusses the request of the city council for this proposed legislation, I would like to add it to the end of defendants' witness list or exhibit list.

THE COURT: Let him see it.

A. I'll show you the relevant paragraph if you'll [1418] come forward.

MR. BLACKSHER: I'm familiar with the article, Your Honor. I'm going to object to its introduction. We have seen this. It seems to us, however, that since we were unable to locate where this appeared on the minutes that the city either ought to be able to produce the actual minutes that indicate this was done or else explain why the newspaper was able to report it being done without it appearing on the minutes.

THE COURT: I'm letting it in evidence because he testified he refreshed his recollection by it as to the action taken and why he took action. The objection is overruled. I'll let you impeach somebody on the city since it does say that. I told you you could get newspaper articles to impeach. I agree with you, since it said it, if you want to use it for impeachment you may do so.

A. May it please the Court, I don't wish to offer anything more than what I'm asked, but at that given point in time there were no formal meetings for the discussion of legislation. Therefore there would have been no minutes of the meeting.

THE COURT: Governor, he was talking about minutes of a city council meeting in which they took action.

A. No, that is exactly what I'm talking about, [1419] Your Honor. You would not have had meetings at that time because they were not official meetings of the city council. As I said, it was a rather informal process.

THE COURT: It was, as between you and them, but he's making the assumption, and it's a reasonable assumption, that the city council before it came to you had gone over it and decided whether to ask the action be taken.

A. Yes, sir.

THE COURT: That is what he's talking about.

A. Yes, sir.

THE COURT: There's evidence here we find nothing in the council minutes respecting the action.

A. Well, the process we employed with local legislation, there would have been no minutes at that given point in time.

THE COURT: It was as between you and the legislative delegation and the city council.

A. No, the city council, because the council when they met on these did not meet formally in session to discuss local legislation. It was a very informal arrangement.

THE COURT: I see.

### DIRECT EXAMINATION RESUMED

BY MR. CATON:

[1420] Q. To the best of your knowledge no official minutes were taken of those types of meetings? A. No, sir. No, sir, not in the very beginning. It's only been, frankly, until we were able to get the Sunshine Law, of which I was the sponsor, that you'll find that they've become recorded. Prior to that time, in fact they could well have been talking to somebody in Child's Cafe for all anyone would have known about the request.

Q. So this particular period of time was prior to the adoption of Chapter 286, the Sunshine Law? A. That's correct, and all we would have done is sat around with reporters from the paper there but it would not have been an official meeting of the city council wherein they would have had minutes.

Q. Incidentally, speaking of reporters from the paper, was Mr. Moose Harling a reporter for the paper at that time? A. Yes, sir, Mr. Maurice Harling covered almost all of the city and county. Where it takes several reporters now he generally reported the city, county and the school board. At this particular meeting, however, he was covering the legislative session in 1959 and he was in Tallahassee. Therefore, I'm sure, is the reason why Mr. Paul Jasper covered it. He would probably know as much



[1421] about anyone, as anyone in the county about the workings of government at that time.

Q. And is he here today? A. He's here today. In fact he was given the Jaycee Good Government Award for his contribution to government.

Q. Governor, you say the city council requested this change. Were there other organizations that were also involved in the change from ward to at-large election? A. I think this originally emanated from a request of the Pensacola Chamber of Commerce. It essentially originated from them based upon their desire to, what they felt at that time, was to upgrade the quality of the representation on the council, and running at-large they felt would do this. Now, in addition to this the League of Women Voters, many organizations at that time, were strongly in favor of doing away with what was then thought to be, quote, ward politics. The League of Women Voters led the fight in this state to do away with election from single districts on both the county and school board. I hope, at the appropriate time, however, I would like to express myself, if it's permissible, not now, what my feelings are now about that.

Q. Yes, sir, we understand that. Well, what [1422] would you consider to be the prime reason for this change, this 1959 change? A. The prime change was that they felt like that it would result in a better quality of representation than they felt they were presently getting from the system that they had, by having an election citywide as opposed to part of it being from districts.

Q. Did you agree with that at the time? A. I certainly did.

Q. And — A. I might also say that this was sub-

mitted to referendum of the people in which they approved it.

Q. Yes, sir. Do you recall the city council race in 1955 between Mr. Charlie Taite and Admiral C. P. Mason?

A. I have no recollection of that at all. I was in law school at the time, and frankly, until Dr. McGovern even discussed with me I couldn't even remember that much about it.

Q. During the time this change was being discussed and submitted to the delegation did it ever come to your attention that race may be a factor in making this change? A. I think with some it may have been because I did distinctly recall, and this is without the necessity of [1423] independent recollection because it stuck out in my mind, that one city councilman made what I thought was a racial slur.

Q. One city councilman? A. Yes, sir, one city councilman.

Q. How about the other nine? A. I can not recall anything from anyone else of that nature. I frankly was offended by the remark and, frankly, had I thought that it was racially motivated I not only would not have introduced it, I would have opposed it, because the 1959 session of the legislature was a difficult session in which there was substantial racial legislation coming before it and the biggest fight in the 1959 session of the legislature was that the Senate had passed what I felt was some undesirable legislation which I characterized on the floor of the House in rather, very clear terms, and the fight was to keep the House from extending the session past the sixty days, which required a certain vote, in order to keep from considering the legislation that the Senate was passing. Gover-

nor Leroy Collins was Governor at the time. He wanted to get us out of there so we would not pass any bad legislation. Former Circuit Judge Tomm Beasley, who was then Speaker of the House, came down from the rostrum and made a stirring speech that we go home and not stay there to [1424] consider what would have been legislation in my opinion that would have been very adverse to Florida, and as a freshman I had the privilege of leading the fight. I say that, Mr. Caton, so that you will put in context that from the time I started running in politics black people have supported me and from the time I started in politics there was always that undercurrent that was attempted to be inserted in my election. I was sensitive in that regard.

Q. Yes, sir. A. And had I felt at the time that that was the reason, as I say, not only would I not have introduced it I would have opposed it, which would have killed it.

Q. Had you opposed it, it would not have passed. A. That is true, because there were two members of the legislature, excuse me, two members of the House. One was Mr. Stone, a dear friend of mine, who was an outstanding member of the House, who was killed in an automobile accident later, and Mr. Philip Beall, who was our senator, and nothing could pass when there's only two if both didn't agree, so I cast off that remark, frankly, as being the opinion of that one councilman.

Q. Talking about that one racial remark? A. That one councilman, because I think he was trying to decide which way he would be better off and I [1425] think he decided he might not be better off either way.

Q. Which councilman was that? A. I will answer, I would almost prefer not to, if the Court tells me, because his remark was of a racial nature.

Q. Well, the name has already been mentioned.  
A. Well, Mr. Red McCullough. What he said was that, "If this bill doesn't pass we're going to have a salt and pepper council." That's what he told me. And as I say, I remember that. It stood out in my mind and I don't need to be independently recalled of that.

Q. But I believe you stated you disregarded that as his opinion.  
A. I was offended by his remark because I thought it would be one of the better things that could happen at this time.

MR. CATON: That's all I have, Your Honor.

MR. FLEMING: Your Honor, may I make just a procedural point prior to cross examination. At the Governor's request I would like to note for the record the Governor is appearing here today voluntarily, not under compulsion of subpoena, and any subpoenas which have issued have been discharged at the Governor's urging. Is that correct, Governor?

[1426] A. That is correct.

MR. FLEMING: Thank you, Governor.

THE COURT: You wish to ask a question?

MR. FLEMING: No, Your Honor, I have no questions.

THE COURT: Cross examination?

### CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Governor Askew, I'm Jim Blacksher from Mobile representing the plaintiffs. Could you set the scene for us where this meeting took place where Red McCullough's racial remark was made? Where was this?  
A. I don't really recall. It seems to me it was connected with some

type of rally somewhere. It may have been some, it seems to me it was outdoors but I would, I don't really have an independent recollection of the context. I just have a recollection of the remark.

Q. Were the other council members present? A. I can not recollect who was present but I do know that in the back of my mind at the time I felt that I was appreciative that I did not think that was a consensus of the other members.

Q. Did everyone else present in your recollection stand up as one and disavow this racist remark? A. I can't even tell you who was present so I [1427] can't very well tell you whether they stood up and disavowed it, but I can't recall anything other than the fact that I didn't respond. I had gone, I had gone through a race, Mr. Blacksher, in which some of the people in this community had indicated they were going to burn a cross on my lawn. Some had made some very strong remarks toward me because I refused to support any type of legislation that would have closed the schools. So what I want to tell you, that was during the election in '58, so that by the time 1959 had come I had fully made my position clear, so as I recall I said nothing further about it except I didn't appreciate the remark.

Q. Governor, I think you've firmly established what your feelings were when you introduced the bill and my line of questioning is directed at trying to determine what you knew of the motives of the council members who proposed the change. A. I can not state what the motives categorically of any of the members of the council would have been. I can only give you the benefit of the way in which I'm sure I received it. And had that been what I thought was the motivation I simply would not have introduced it. I realize that is not being completely respon-

sive, you know, to what you say, but I can't really speak to what the [1428] motives of the other people may have been. There may have been some who were motivated in this direction.

Q. The exhibit that's been introduced as city exhibit 1, the newspaper article, do I understand that Paul Jasper wrote this? Is that your understanding? A. Well, I only know that that is his name beside that story and I would assume that he covered the meeting.

Q. April 30, 1959. And you don't know whether there are minutes that support what this paper says or not? A. No, sir, I do not. I would think there would not be because these discussions on local legislation at that time simply didn't take place in a formal meeting.

Q. Can you recall whether after this April 30, 1959, event at which the county approved a change in the city charter which allowed candidates to run at-large rather than from individual districts, whether after that there was a meeting between you, Mr. Stone, the council members, regarding introducing the legislation? A. No, I'm sure there wouldn't have been a meeting. It was a matter of me checking with Mr. Stone and me checking with Mr. Beall. It was done, frankly, at that time, very informally. But everybody would have signed off on the bill and I would, most of the legislation [1429] during that session was introduced in the House. In fact I became the one who would wind up doing most of the work introducing the legislation.

Q. Okay, sir. I guess what I'm trying to establish, as best I can, was how was it communicated from the council members to the legislative delegation that there was a desire to make this change? A. I rather think somewhere along the line I was sent a letter from Churchill

Mellen, whoever was the city attorney at the time, inclosing copies of it and asking us to introduce it. Mr. Mellen also used to come to the sessions and present the legislation but the important thing is that there was an understanding between all of us that we would support it and it had to have either a local advertisement thirty days prior to introduction or it had to be submitted to a referendum. In this case it was submitted to a referendum and I would think that it was, it would have been communicated to us either in writing by letter or handed to us personally. But I went back after Dr. McGovern's call, I went back and could not find any records of the 1959 session and I also asked members of my, the law firm I was formerly associated with, if they could find any trace of that 1959 session. I have to tell you that we have nice offices over there now for members of the legislature. When I went there, your [1430] office was your desk on the floor. You had another desk upstairs you shared with other people and it was frankly not a very good arrangement for keeping good records, and I'm sure it was communicated to me in some way.

Q. Governor, you mentioned Maurice Harling.

A. Maurice Harling, H-A-R-L-I-N-G.

Q. As a reporter at that time, and is he now on your staff, do I understand? A. He has been with me since the time I have been Governor. And he worked in the News-Journal. He came, I believe, sometime in about 1947 or '48 and he's covered every session of the legislature from then up till the time I became Governor. He retired from the *Pensacola News-Journal* and I was fortunate enough to have the benefit of him to come to work with me.

Q. When did he retire from the *News-Journal*?

A. Well, he retired at the same time that he came to work

for me, which would have been at the first of the year 1971.

Q. All right, sir. So he was around here as a reporter in 1959? A. I can tell you that he probably knows more to the extent that he has independent recollection about government and the workings of government probably than anyone that I know.

[1431] Q. Well, with regard to the extent of Mr. Harling's knowledge and the knowledge that people at the newspaper had about government, Governor Askew, have you seen the editorial that's been introduced regarding this election and the statement in the editorial, which I'd better read since there's some disagreement, Your Honor, about what exactly it says. I'm going to read you the editorial and get you to comment. A. I have read it, but, completely the editorial, and frankly I have absolutely no recollection of ever having seen the editorial.

Q. Well, that wasn't going to be my question, so better let me read it.

THE COURT: You want to read him only that part you were talking about, I'm sure, not the whole editorial.

Q. Just the one paragraph, yes, sir. "This would be an advantageous change for at least two reasons. One reason is that small groups which might dominate one ward could not choose a councilman. Thus one ward might conceivably elect a Negro councilman. Thus one ward might conceivably elect a negro councilman although the city as a whole would not. This probably is the prime reason behind the proposed change." My question to you is based on what we've said, that isn't it fair to say that the newspaper at that time with people like Mr. Harling working on it should have been in the know as far as what was going [1432] on behind the scenes politically on a local level?



A. And there may well be an explanation of why that was like it was. It's really incongruous, you know, with Mr. Marion Gaines, who was the editor, you I think was one of the most outstanding editors any newspaper had, and Mr. Don Hogan, and of course you have to read the next paragraph with it. But I think you'll also find that Mr. Harling in his explanation of the pros and cons on it never mentions anything like that. So that may at that time have been the feeling of one person on the *News-Journal*. I personally, as far as I'm concerned, that was not my recollection of it.

Q. Do you think that — strike that. Governor, I think in fairness we both ought to take note of the differences in just the way people thought about racial matters in 1959 as opposed to the way we do now in terms of what would be considered then as active and vicious racism as opposed to now. Isn't it possible that in those times, and I'm talking about 1959, there were still people who thought about good government and keeping blacks out of government in one and the same breath? A. Yes, unfortunately there are still some today.

Q. So that the person who wrote this editorial and the people on the editorial board who approved it were [1433] not necessarily raging racists, at least in the context of those times? a. Yes, sir, I think that's a fair statement.

Q. In your opinion could an editorial like this, written at that time, have had any effect on the electorate in regards to how they would turn out for or against the referendum? A. I think that with that insertion in the editorial unquestionably it could have had an effect in appealing to those who would change it for that reason.

Q. Governor Askew — A. That was in regard to the referendum, you know, as opposed to the request for the legislation.

THE COURT: Was that editorial before or after the referendum?

MR. BLACKSHER: I beg pardon?

A. The editorial, I think, was in September.

MR. BLACKSHER: It was on the eve of the referendum.

THE COURT: On the eve of the referendum?

A. It was in September after such time as the legislation had been passed, Your Honor.

Q. Right. That was just before the vote was taken. Governor Askew, counsel for the city didn't give you the [1434] opportunity to state your present position so I want to call to the Court's attention that already in evidence as plaintiff's 35 are two newspaper articles and I would like to read pertinent sections from them and see if you still agree with this, Governor. One is December 6th, 1976, *Miami Herald*: "Askew's speech, however, made it clear that he wants a Constitutional Revision Commission to consider single-member districts for not only the legislature but local government as well 'to insure greater representation to minorities.' " Would you still stand by that statement today, Governor?

A. Yes, sir, and if it meets with the approval of the Court I would like to amplify on it.

THE COURT: All right, sir. Go ahead, sir.

A. I want to say that when we look back twenty years I don't know why we permitted some of the things to ever take place that did take place, and I don't say that in reference to the introduction of that law. At that time we were, I think, concerned about what often was called ward politics. I think that day is behind us. I think that we have

the benefit through television, from media, for people to make up their own minds and I have come to believe and believe very strongly that while single-member districting will not require necessarily fair representation among minorities, in my opinion it is the [1435] single most important step you can take to try to better insure representation by minorities. I believe until every multiple body that is elected such as your school board, your county commission, your city and your legislative districting, until they are districted singularly where one person votes on one person from all of it so the people know who to hold accountable, pinpoint responsibility, and that the districts are fair and not gerrymandering, which often took place back then because districts sometimes were arranged to insure that there would not be minority representation, and I personally feel that if black people in this case, other minorities, if they're not afforded an opportunity through single-districting to speak and elect some of their own people to the boards, which that government is supposed to represent them, I don't know how we can say that government is truly representative of all the people. In Florida we have a handful of black people in the legislature in spite of the fact we have a substantial percentage of our people who are black. We have a half a million Cuban-Americans in this state and yet Dade County has no Cuban-American. And I have just got to believe strongly, and I have said so, I was disappointed in the Constitutional Revision Commission that they only districted legislative districts but that was at least a step in the [1436] right direction, because we need more minority representation on government if government is supposed to fairly represent them and if we want young black people in particular to feel they're part of the system. Then they have got to be given a chance in a fair way and not be outvoted with a larger majority. And I understand, I have tremendous respect for

the judge presiding in this Court and I know that he has to enforce the federal law as it's set forth as opposed to doing what he may or may not like to do. I understand the context under which this takes place. But I've been in government twenty years. I think that we've come a long way. We have a long way to go. It may not be the context of litigation that brings this about but it is going to happen and it's going to happen one way or the other, for one reason because it's right in terms of pinpointing responsibility and because it is fair.

MR. BLACKSHER: Okay, sir. Thank you.

THE COURT: Any redirect?

MR. CATON: Just one question, Your Honor.

### REDIRECT EXAMINATION

BY MR. CATON:

Q. Governor, you've stated very eloquently the case for single-member districts. Is there not also a case for the at-large system as espoused by other people with [1437] qualifications maybe not as well as yours but similar? A. Mr. Caton, I can only state my views.

Q. Yes, sir. A. But I want to assure you that I am now finishing up twenty years. I've been privileged to serve as Governor of Florida longer consecutively than any person in the history of this state and I'm here to tell you that when you force people all to be elected within the whole political constituency you are indirectly disenfranchising a lot of people from fair representation.

Q. Yes, sir, I understand your viewpoint. My question was, are there people that hold a different philosophy, legislators throughout the state? A. There are. There are many people who do hold this different view, but I am

gratified that just as I have come to appreciate the importance of this, I believe they will come to appreciate the importance of it.

Q. Yes, sir. A. If they want a government that is supposed to be truly representative of all the people.

MR. CATON: Yes, sir. That's all I have, and unless there's some further questions I would like to thank the Governor for being here today, Your Honor.

THE COURT: Well, I think there will be no further questions, Mr. Blacksher. He's had his chance at him. [1438] Governor, thank you for being here and you're excused from further attendance. A. Thank you, sir.

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## TESTIMONY OF MARVIN G. BECK

[1462] MARVIN G. BECK, called as a witness by the defendants, being first duly sworn, [1463] testified as follows:

## DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, this is Marvin G. Beck. He's presently a county commissioner on the Board of County Commissioners for Escambia County Florida. He's chairman of the Board of County Commissioners for a one year a term which expires in November as far as chairmanship is concerned. He's a lifelong resident of Escambia County, His age is forty-five, residence address 1264 Whipporwill, Cantonment. Formerly athletic director and basketball coach at the University of West Florida and formerly teacher at Pensacola High School.

THE COURT: He was elected when?

MR. LOTT: Nineteen seventy-six.

THE COURT: For the record we need to ask him to verify that on the record.

Q. Mr. Beck, are the statements I just made about you true and correct? A. Yes, they are.

Q. Mr. Beck, you were first elected to the Board of County Commissioners in 1976. When was the first time you ran for countywide political office? A. This was the first time I'd entered into politics.

[1464] Q. And what party affiliation did you have when you ran? A. Democratic.

Q. All right, did you participate in the Democratic Primary in September of 1976? A. Yes, I did.

Q. Who were your opponents in that election? A. The incumbent was Mr. Sam Armour. Other members in the race were Mr. Clarence Gulsby and Mr. Harold Brown and myself.

Q. Okay, during that campaign what were the issues that you campaigned on and that any of the other candidates addressed as far as the county is concerned? A. I think the basic issue that I tried to put forth is accessibility of a county commissioner. I found that the incumbent was not accessible to the people and this is a big point that I tried to put forth in my campaign, that I would be accessible, I would have an office in the Court House and I would be there whenever people needed me and wanted to reach me.

Q. All right, as a result of the primary was there a runoff? A. Yes, there was a runoff.

Q. Who were the candidates in the runoff? A. It was Mr. Armour and myself.

[1465] Q. And thereafter, the runoff results? A. Of course I won the election and there was not a Republican opponent.

Q. No Republican opposition? A. No Sir.

Q. In the general election in November. Okay. Would you describe in what areas you campaigned for the black votes in Escambia County. A. Well, as you know, the rallies were set up in all different areas of the city and of the county, and of course I attended all of the rallies that were sponsored by the Democratic Committee. In other areas I talked to a group of black ministers out in the Ensley area at a church who represented a large area of the city and the county. That was on the western side of Ensley, I guess you might say. And in the Cantonment area at the recreation center in that area. Also on the

eastern side up in the Century area and plus down in the southern part of District Five and the eastern part of that district in the Ensley area too.

Q. All right, what kind of rallies or gatherings did you address during your campaign? A. As I said,, these were basically scheduled rallies, Democratic rallies throughout the county that we, that all the candidates, you know, had the privilege and [1466] opportunity to speak at these rallies.

Q. Were some of the rallies produced predominantly for the benefit of black voters? A. I'm not sure that they were for predominantly black voters, just the location of them. In other words Pensacola High School stadium is an area that is there. It's not specifically for a black section.

Q. All right. Do you consider the black vote to be an important factor in the success of your election as county commissioner? A. I certainly do.

Q. How so? A. Well, I consider all votes as being important in getting elected and of course this is true of black and white. Anyone that, you know, is eligible to vote that I can represent is very important.

Q. Did you have any black citizens assist you in your campaign efforts? A. Yes, I did have some that assisted me. First of all I might say that I really did not have a group, an organization that some people might have. Basically it was myself, my wife and my children, and I had a sister and brother-in-law that basically put forth my campaign efforts. And I did have some friends in the black community that did help to pass out literature and to speak to groups [1467] for me.

Q. Who were those persons, if you can recall some of them? A. I had Mr. Elmore Standberry in the Canton-



ment area who works for St. Regis. He helped in that area, and Mr. Lawrence Green in the Ensley area. Mr. Cleve McWilliams, who is with the school system. Es'her Williams, Marion Hargraves. These are some of the ones that I can think of off the top of my head.

Q. You're presently the county commissioner in District Five and that's a residency district in the county. Would you describe briefly what the district boundaries are. A. Basically it's from the Interstate north to the eastern boundary of the Escambia County River to the western boundary of Perdido River all the way to the Alabama line, the western boundary and northern boundary.

Q. Would you briefly describe for the Court the functions of the residency district as far as the county commission governing its territory is concerned. In other words what effect does the fact that you represent or you're elected from a residence district have on your interests in the county? A. I don't exactly know exactly what you mean.

[1468] Q. Well, you come from a residence district, District Five, and that's where your residence is located. What areas of special interest come to you as a county commissioner from District Five as opposed to all over the county? A. Well, I would say the main concern in District Five would be the roads, the system in that area. As you know or may not know, the road paving formula was based on 20 percent in each district, and of course District Five, which is my district, has over three hundred miles of unpaved roads. This is 77 percent of the unpaved roads in the county. So I think this was a major problem of the people living in that district. Of course it is a rural area in the northern part of it. Of course the southern part of that district is a district that's probably increasing more

rapidly than any other section of the county because most of the people are moving out in that direction.

Q. All right, as far as road paving is concerned you mentioned the 20 percent allocation of road paving funds to District Five. Is that presently the situation in the county commission? A. No, I was able to convince or persuade the other commissioners that it was really not fair to the people in District Five, where you had 77 percent of the [1469] unpaved roads, to only receive 20 percent of the money, and this had been the case I don't know how long, but this is one reason that we had so many problems in District Five because whenever you have 20 percent of the money and 77 percent of the roads that need paving, it developed over a long period of time and you have a problem. I was able to convince the other commissioners with the help of the constituents in that group, I think, to change that formula. I now receive 39 percent of the road paving money, in road paving budget money for District Five. Last year, my first year on the board, we had a total of like three hundred twenty-two thousand dollars for the entire county budget. That was based on 20 percent per district, which amounted to about sixty-five thousand dollars per district. This year we have about 1.4 million dollars in our road paving budget and my budget for District Five is like five hundred twenty-two thousand dollars. So it has, we have more money in the budget this year and we are also, I'm receiving more money in District Five, which we're able to get a lot more done in that area.

Q. What argument did you use to persuade the other county commissioners to allocate additional funds to you? A. Well, when I first started, I tried to convince them that I needed this money based on just figures of being [1470] 77 percent of the unpaved roads but I didn't get anywhere. I was voted down four to one. But then I

kept up my work and every time I would go into the district I would tell the people that were talking to me about road problems and needing roads paved that, I would tell them that's, "Well, I agree with you but you've got to help me convince those other commissioners that you vote on those people just like you do me," and I think this, you know, had a help in convincing them that they should change that formula.

Q. Okay, since you've been a county commissioner have there been substantial road paving efforts made in District Five? A. Since I've been a commissioner?

Q. Yes, sir. A. Yes, from the amount of money we have turned it around, like I said. We had sixty-five thousand dollars which was left from previous administration, up to five hundred twenty-two thousand dollars. So you see it's a considerable amount going into District Five.

Q. All right, sir. In making your determination of what roads were to be paved as a result of this additional money what kind of criteria did you use to determine what roads would be paved? A. Well, as you know, I have a very large area [1471] that I represent. It's from the east side to west side, which is approximately twenty-five miles, and it's approximately forty-five miles from north to south. And my main concern is trying to spread this out as much as I possibly could in all areas to make sure that we could try to provide something for as many people as I possibly could. The other point was that the volume of traffic on the roads and also, you know, the need, the problem areas where we had more complaints. This would be one of the criteria. If we had, you know, whenever it comes a rain or something we have fifty or seventy-five calls in a particular area, then of course, naturally, I'm going to look at that area. But basically it was based on

volume of traffic, trying to spread out, you know, geographic location and the need, the severity of the problem.

Q. Would the race of the person complaining about a road problem have any bearing on your decision to allocate money for the paving of the road? A. No, I think you can look at the list of roads that I have on my paving list and it would verify that.

Q. All right, sir, from that paving list would there be roads that are in predominantly black neighborhoods or black areas or that serve predominantly black people in [1472] your district? A. Yes, that is true.

Q. Could you enumerate some of those roads and explain how they were chosen? A. Well, we have a prime example, would be Quintette Road and Welcome Circle, is a predominantly black section. Quintette Road is a road that runs from Old Highway S-95A over to 29. It's what we call a collector road and this is basically what I tried to spend my money on paving at this time because we did not have enough money to get to all the requests that I had. I had as of last week, I had eighty-five petitions for road paving. You know, this is in addition to the ones that I have on my list. And of course I received a couple in last Thursday's meeting. But in the Cantonment area, the streets of Booker, Lewis, these areas are predominantly black that are being resurfaced and blacktopped in that area.

Q. Mr. Beck, let me ask you a question at this point. There was testimony earlier concerning the number of streets paved in black areas in Cantonment. Would you say that more than two streets in the Cantonment area are paved or under paving contract at the present time? A. Yes, I would say it would be.

Q. About how many more? Do you have any idea? [1473] A. Well, you say completed at this time or to be paved?

Q. Or under contract to be paved?

MR. BLACKSHER: Objection, Your Honor. I think to ask him, no, that's all right. I'll check it on cross examination.

THE COURT: Can you answer that question, Mr. Beck? Do you know the status of those roads out there now?

A. As of, no, I haven't been in that area in the last week but they're under contract to be paved.

MR. LOTT: We'll have some other testimony on the same thing, Judge.

THE COURT: I believe you all can get together and more or less stipulate on it. As I understand, a contract has been let and the contract is underway and it will take care of most of the streets in the Cantonment area. Isn't that the testimony I've heard so far?

MR. LOTT: Yes, Your Honor.

THE COURT: Go ahead.

Q. Are there areas in your district that are predominantly white that have unpaved roads and that there have been requests for road paving? A. Oh, yes. I have a large number.

Q. Are there requests received from white persons by you for paving in District Five that will not be responded to immediately and black areas that will receive paving in advance of the rest of those white areas?

MR. BLACKSHER: Objection to counsel leading the witness. I think if we could —

THE COURT: You were leading the witness, Mr. Lott. Watch your questions.

Q. Yes, sir, Your Honor. I'm trying to facilitate moving the witness along rather than trying to drag it out but I'll try not to suggest the answer to the witness. Mr. Beck, would you say the allocation of road paving in District Five as a result of your actions predominantly benefits whites disproportionately over blacks?

A. No, as I pointed out, I've tried to go to the geographic locations and trying to spread it out in the large district that I had and trying to, you know, make it as far, as much as possible to all the citizens. And I do not feel that I have favored, you know, white over black or black over white.

Q. Do you feel that the supply of paving and other services that you have control over in District Five to predominantly black areas is an important element in your responsibility to the constituency that elected you?

[1475] A. Yes, I do. For example, the area in Quintette, Welcome Circle, a citizen, Mr. Elmore Standberry, Mr. Gray, I went with those people and we rode over those roads right after I was elected and I felt —

THE COURT: Mr. Beck, do I understand that the way the county commission operates is that the individual county commissioners go into the wards from which they were resident and they decide the road projects? You don't rely on your commission staff for that?

A. Yes, sir, we do. We have engineering staff that has a list of the roads and the problem areas.

THE COURT: But then each individual commissioner in a particular residence district decides what's going to be paved and what isn't? Is that what you're telling me?

A. Based on the volume of traffic and general location.

THE COURT: Why do you have an administrative staff, engineer and county manager? Aren't you a policy-making body?

A. Yes, sir, we have.

THE COURT: Yet you take that policy where each individual one of you decides which roads are going to be put in the residence district from which you come. Is that [1476] what you're doing in the commission?

A. Yes, sir, the road paving money is divided up in each district and you have the authority to go with engineering and with staff to determine the basic need for the final decision —

THE COURT: You don't have an overall policy where the money goes where it's good for it, regardless of where it needs to go?

A. This is always, Your Honor, you work out with engineering and this is part of your decision.

THE COURT: In other words the commission serves as more than a policy-making body; it involves itself in the day-to-day operations of the county to such extent that each of you in a residence district from which elected may go down and ride out there and say, "We're going to pave this road and not that one." That's the way you run it?

A. As far as road paving is concerned, this is true.

THE COURT: All right.



## DIRECT EXAMINATION RESUMED

BY MR. LOTT:

Q. Mr. Beck, in connection with drainage problems, and you can address your question, your answer to questions, on a countywide basis, are you familiar with drainage problems [1477] in black areas that are predominantly black neighborhoods that are under construction or improvement by the Board of County Commissioners? A. Well, we've already mentioned the area in Cantonment as one that's under construction.

Q. Are you aware of areas in predominantly white neighborhoods where more severe problems exist as far as drainage is concerned but which are not receiving attention from the county commission? A. Yes, there's an area that's south of the Nine Mile Road and west of Chemstrand Road, through that area, that's been a continuous drainage problem that's connected, you know, with state and county problems, that we have not been able to solve at this time. We are hopeful we'll be able to work something out with the state and so the county can solve that problem.

Q. All right. I would like to direct your attention for a few moments to the proposed charter that was recommended by the Charter Committee appointed by the Board of County Commissioners to study charter government and which committee made a recommendation to the Board of County Commissioners concerning single-member districts. Are you familiar with the recommendation of that committee to the Board of County Commissioners concerning single-member county commission districts? [1478] A. Yes, I am.

Q. All right, what was the decision of the Board of County Commissioners with respect to that recommenda-



tion? A. We voted, I think, to recommend countywide elections and from my point of view I think I just pointed out the example that I used to be able to get the road paving formula changed as my reasoning why that I felt like that the countywide election is better than the district election because I felt like that is it went to a district election that the other commissioners would have no need to share or change the formula. They could set it up at 20 percent in each district and we'd be right back where we were and not getting anything done for the people in the north end of the county. And that's the reason that I voted, I felt like that the countywide election would benefit the people in that area countywide rather than trying to go to a district and be isolated, so to speak.

Q. Okay. Under the present at-large election system do you receive complaints from citizens and requests for service from areas outside your own residency district? A. Yes, I do.

Q. Do you issue work requests for those kind of requests? [1479] A. Yes, I have issued work requests for, in all districts of the county.

Q. Would you explain briefly for the Court what a work request means? A. This might be a particular problem, it might be a driveway that's washed out or something in a district and someone calls my office and a lot of times we can go ahead and issue a work request for the county road department to go and take care of this driveway. This is issued through my office. It doesn't necessarily have to be in my district. I have issued them in all districts for this type —

THE COURT: You don't consult anybody but yourself on that?

A. No, sir.

THE COURT: And it goes to your county engineer?

A. Goes to our county engineering.

THE COURT: It's a request but he sort of treats it like a command to go do something and does it?

A. Well, they check out whether or not it needs to be done. They'll send an inspector and see if it is a problem, and of course the inspector will make that report to the engineering department and it's related to the road department and they take care of it.

THE COURT: And that's a day to day operation you're [1480] involved in? Now, you do this as chairman or each commissioner does this?

A. Well, I would think that each commissioner.

THE COURT: Each commissioner can issue a work request?

A. Yes, sir. Yes, sir.

Q. Commissioner Beck, do you feel that the needs of black constituents could safely be ignored now that you've been elected and you could act with impunity towards requests from black citizens for county services under your control? A. Excuse me, I didn't hear all your question.

Q. I'm sorry. Do you feel that you could safely ignore the needs of your black constituents or black persons in Escambia County and still get reelected or act with impunity towards those requests without fear of action at the ballot box by those people? A. No, I don't. I don't think you can neglect any segment of the county and get reelected. I think, you know, accessibility and what you do while you're there and how accessible you are and how you represent the people, I think, you know, you've got to do that to get reelected.

Q. Do you feel that you have adequately represented and that you do adequately represent the interests of black citizens of Escambia County? [1481] A. I certainly do. I feel that I represent all the citizens of Escambia County.

MR. LOTT: No further questions.

THE COURT: Cross examination?

### CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Beck, did anybody ever accuse you of not having good sense in giving up a job as basketball coach to go into politics?

A. Yes, sir, I've been accused of that.

THE COURT: I'm not sure that's exactly relevant. It may be Mr. Beck himself has wondered about it from time to time. Is that right?

A. Yes, Your Honor, you're right.

THE COURT: Go ahead, Counselor.

Q. In your campaign for county commission, let's say in the Democratic Primary since you were unopposed in the general election, how much did you spend on your campaign? A. I think it was approximately fourteen thousand dollars.

Q. How would you compare that with the amount spent by your opponents? A. I really don't know. I haven't looked at the record on what they spent on the campaign.

[1482] Q. When did you say the Quintette Road and Welcome Circle were paved? A. It's under contract to be paved. They have the base material down now. It's waiting for the final cap on it.

Q. Isn't it a fact that those contracts were let after this law suit was filed? A. I'm not sure when the contract was let for the road paving.

Q. Well, were they let in '77 or in '78? A. They were let in '77.

Q. And what part of '77? A. Well, our budget year is from October to October and when they were finally approved, I don't know.

Q. What about the Cantonment paving and drainage work? When was that let? A. I'm not sure on the date that the Cantonment project was let. But I know it's been underway for some time. We've had a weather problem in the area.

Q. Well, do I take "some time" to mean several weeks or several months or several years? A. Several months.

Q. Several months? A. Yes.

Q. Now, is there some federal money going into [1483] the Cantonment project? A. Yes.

Q. Isn't it a fact that you've gotten some community development money to do this project in Cantonment? A. Yes, this is true.

Q. And there are certain guidelines pursuant to the feds on exactly what areas you can use this community development money in, right? A. This is true.

Q. And when you use community development money it has to be, all of the entire cost of the project has to be paid for by the community development moneys, is that correct? A. Yes, this is true.

Q. This area that was south of Nine Mile Road and west of Chemstrand Road that Mr. Lott referred you to

which is predominantly white, did you say it was in worse shape than Cantonment? A. I would say it would equal the Cantonment area, yes.

Q. But it's not being fixed? A. No, sir.

Q. Okay, are you saying that the predominantly black areas in Cantonment are getting preferential treatment [1484] over this predominantly white area? A. No, I would not. You know, this is just a matter of money again, what you can do.

Q. Was the community development money available for this particular location west of Chemstrand Road? A. No, it was not.

Q. Did you say that you were on the committee that was appointed by the county commission to study charter government? A. No, I don't think I said that.

Q. All right, I misunderstood you. So you didn't have an opportunity, I take it, to voice your opinion on district elections as opposed to at-large elections until it came up for a vote on it? A. We had public hearings as a body, the commission group, the county commission, held eight, ten, I don't know exactly how many public hearings. But basically we were there to hear the input from the citizens and not to voice our opinion one way or another on the charter government.

Q. Okay, I want to go into the reason you gave the Court why you voted for at-large elections and striking from the committee's proposal the single-member district aspect of the charter proposal. As I understand it, it's your contention that if you had to run from a district [1485] you would not be able to deal with the other commissioners and make them be fair to the constituents in your district as regards paving. Is that what you

mean? A. Well, I think it would help, you know, to know that each commissioner has to rely on all the citizens of Escambia County to be reelected. Yes, I think this would be the assumption.

Q. Have you done any, have you got any personal background to make this judgment or have you done any studies to make this judgment? A. No, sir, I was just going on the record of what it has been for a number of years. It's been 20 percent of the money in each district and it's now 39 percent in District Five and a lower number in some of the other districts.

THE COURT: It's just been an arbitrary 20 percent for a number of years? A. Yes, sir.

THE COURT: Well, now that means, Mr. Beck, in a way, what the commission was doing while you talk about representing each other generally, and that's what they're supposed to do under the law, as I understand it, nonetheless they were just arbitrarily giving somebody in the district, weren't they; they were in effect representing a district.

A. Also the other side of that, the commissioners [1486] are able to use money in other districts rather than their own district.

THE COURT: Well, I know, but I thought you said for a number of years until you were able to get some more money it had been 20 percent arbitrarily in each district.

A. Basically I think this is the way it has been.

THE COURT: I see.

A. I'm sure how many years it has been based on 20 percent per district.

THE COURT: I was just suggesting to you and I was

trying to understand this, under the Florida law you're supposed to be a policy-making body, are you not, and you represent everybody in the county.

A. Yes, sir.

THE COURT: And you're elected from a resident district so you'll have knowledge of the particular district to contribute to the commission but then how can you say you're fulfilling that function and why aren't you in effect really treating it as single-member districts when you, instead of doing all that, each one of you takes a district or he's sort of responsible for that district and gets all the money he can for that district and he goes down and makes decision where the money is going to be [1487] spent instead of turning it over to the administrative, your manager, your engineer, and letting them set the details of it. I don't understand that approach. A. Well, we get that, your Honor, we get the list from our engineering department on, you know, all the roads that are brought up for discussion for pavement and this is where the decision is made, you know, from the staff that brings the list to us.

THE COURT: But then you go into a district and make final decision, each of you individually?

A. Yes.

THE COURT: All right, go ahead, Counselor.

#### CROSS EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Mr. Beck, I'm still puzzled by the last answer you gave me, which indicated that you thought that the way, well, that somehow the situation had been allowed to develop whereby District Five ended up with the most un-

paved roads, but isn't it a fact that you had at-large elections for the county commission now in this county for the last twenty-four years? A. Well, the thing about it, I think the districts were set because of the population in each district and not, you know, based on roads in each district. This is they way —

[1488] Q. Do you understand we're trying to get at your reasoning on why you think the at-large system is better than the district system? A. Well, as I pointed out, I feel that being able to have the people in my district tell the other commissioners that they, you know, vote on them too, not just me, that it might have an effect on, you know, setting up an equitable formula for road paving.

Q. Mr. Beck, in these hearings that the commission held on the question of the charter proposal isn't it a fact that a number of black citizens as recorded in the minutes presented to this Court of those hearings appeared before you and urged the commission to leave in the district elections that the charter study committee had proposed?

A. At some of the hearings?

Q. Yes, sir. A. I don't remember any specifically.

Q. You don't remember Mr. Crosswright there?  
A. Mr. who?

Q. Crosswright. A. Mr. Crosswright, no, sir.

Q. Do you remember Dr. Gainer, Dr. Ruby Gainer? A. Yes, I remember Dr. Gainer.

Q. Okay, you don't remember her urging you to [1489] include the single-member districts? A. I don't, not specifically, no. I do not.

Q. In your opinion, Mr. Beck, is it more difficult for a black candidate to get elected if he has to run at-large in



this county than if he were allowed to run from a district? A. I don't think so.

Q. What do you think are the chances of a black being elected in the current system?

MR. LOTT: Your Honor, I object to the question on the grounds that this suit is not about the electability of blacks. This suit is about whether the people that are elected are representing the black interests. And they've said over and over there's no point at all.

THE COURT: We're also going into a question of motivation and different things. I think it has some outside relevancy, Mr. Lott. All of these things are part of the picture, I'm afraid. I'm going to overrule the objection. Your may proceed to answer it.

A. What was the question again?

Q. Isn't it a fact that there's never been a black person elected to the county commission under the at-large system?

A. Not to my knowledge, no.

[1490] Q. Are you aware of the fact that there have been black candidates who have sought the county commission unsuccessfully?

MR. FLEMING: Your Honor, all this has been stipulated to.

THE COURT: Well, he's asking him about his awareness now, sir, and apparently he's just said he didn't know so we'd better, he may not have that much background. Do you know whether any black candidates have been elected to the county commission?

A. No, sir, I do, as I say —

THE COURT: If you were to assume the fact none have been elected and some have tried to be elected, would that have any effect on your opinion respecting their electability as such?

A. No, sir, it would not.

THE COURT: go ahead, Mr. Blacksher. You never really made any detailed study of the background in that respect, I'm sure, have you, Mr. Beck?

A. No, sir, my past background has been in education for twenty years.

THE COURT: Yes, sir.?

A. This is my first time in politics.

Q. Mr. Beck, if we told you that there was evidence already in this case that indicated that there was [1491] racially polarized voting in this county, that no black had ever been elected to the county commission or to the school board or to any other countywide local office under an at-large system, and that black citizens were bringing this suit to seek a change to district elections to give them an opportunity to express their preferences at the polls, in light of that would you consider that to be in any way, in your decision to oppose the district elections actually proposed by your charter study committee? A. No, as I pointed out earlier I felt like that the countywide concept would enable me to serve the county better in just the example that I pointed out.

Q. Did you read the charter committee's rationale supporting its decision to suggest changes to single-member districts? A. Yes. I read the proposals that we had, that we had to vote on there, but again, sir, basing it on my knowledge of going out and meeting the people in my district is what I'm basing my opinion on.

Q. What black citizens in your district indicated to you that they preferred that you strike the single-member district proposal from the charter government draft? A. Mr. Lawrence Green, for one, believes that the countywide election is better.

Q. Yes, sir, we've had Mr. Green mentioned before. [1492] Who else? A. I don't know of any other specifically that I, you know, know.

Q. You're telling us that you don't recall a single black person urging you to keep the district elections in? A. As I pointed out, Mr. Green had talked to me.

Q. You say he wanted at-large elections? A. The at-large elections.

Q. You don't recall a single black person urging you to vote to keep the single-member districts in the charter proposal?

THE COURT: Well, he just said Mr. Green, didn't he?

MR. BLACKSHER: Yes, sir, but Mr. Green, he said, wanted the district elections stricken.

THE COURT: He wanted single-member district elections.

MR. BLACKSHER: No, sir, he's testifying that Mr. Green wanted at-large.

THE COURT: He wanted countywide. I see. Excuse me, yes.

A. I don't remember anyone coming to me and asking me, you know, to keep, to go, you know, keep a [1493] district election. No, sir.

Q. Who else did you ask in your district among your black constituents besides Mr. Green? A. I didn't ask him. He, you know, he made his —

Q. I thought you said you went out amongst the people in your district? A. I do. I did and I still do.

Q. Aside from Mr. Green who else, what other black constituents did you speak with? A. Specifically on the charter, on the single-member districts?

Q. Yes, sir. A. I don't know of anyone that I spoke to.

MR. BLACKSHER: Okay, thank you.

THE COURT: You had a charter commission you all appointed recommending to you otherwise but in talking, going around to people there you didn't seek to get expressions of opinion from your people about that charter commission; you made up your own mind about it without consulting people outside your constituency, in your constituency?

A. Well, the people in my district when I was able to talk to them about being able to vote on all county commissioners, this is what they agreed that they [1494] would like the opportunity to vote on. I mean the blacks —

THE COURT: You did make some inquiries?

A. Yes, sir.

THE COURT: Among your constituents, and when you say that you talked about your district, you mean your residence district? That's where you made inquiry?

A. Not just in that district.

THE COURT: You made some outside of that as well?

A. Yes, sir.

THE COURT: All right, sir.

MR. LOTT: Your Honor, I have three short questions on redirect.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. LOTT:

Q. Mr. Beck, did the filing of this law suit have any influence or have any bearing on your decision to allocate the paving moneys for Welcome Circle, Quintette? A. No, sir, it did not.

Q. During your conducting of public hearings on the charter government how many people would you say spoke at the public hearings, overall in the public hearings? A. Very few. I don't know just how many people [1495] spoke, really, but we would have, you know, fifteen or twenty at each meeting. That's an estimate.

Q. Fifteen or twenty at each meeting? A. Yes.

Q. Over ten meetings. Were these publicly announced hearings? A. Yes, sir.

Q. On the method of changing the whole form of county government? A. Yes, sir, they were advertised as public hearings and published in a newspaper insert in a pamphlet booklet on the charter proposal.

Q. Mr. Beck, were you aware that a black person had ever won the Democratic Primary for a countywide race? A. I thought Mr. Jenkins had.

Q. Did that play any part in your opinion that a black person could get elected in the county? A. The question again?

Q. Did the fact that you knew that play any part in your decision, in your opinion that a black person could be elected in Escambia County? A. Yes, it did.

MR. LOTT: No further questions.

THE COURT: Let's see, he was defeated by —

[1496] MR. BLACKSHER: Mr. Jenkins beat Mr. Sanders, the college student.

THE COURT: Mr. Jenkins defeated who? That was in the primary election?

MR. LOTT: That was in the Democratic Primary, yes, sir.

THE COURT: And what happened in the general election to Mr. Jenkins?

MR. LOTT: He was defeated by incumbent Republican Leeper.

THE COURT: he was defeated by Republican Leeper. All right, sir. You may step down. I started to excuse you from attendance but you're a party defendant so I don't have to tell you that, but anyhow you may step down now, Mr. Beck. A. Thank you, Your Honor.

## TESTIMONY OF KENNETH J. KELSON

MR. LOTT: We call Mr. Kenneth Kelson.

KENNETH J. KELSON,

called as a witness by the defendants, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, this is Kenneth J. Kelson. He's a county commissioner from District Two and presently sitting on the Board of County Commissioners of Escambia [1497] County Florida. He's fifty-six years old, self employed, owner of Florida Electric Company. He resides at 1600 West Cypress Avenue. Mr. Kelson, are the facts I just related true and correct? A. It's true.

Q. Mr. Kelson, what year did you first run for county commissioner? A. The first time I run for county commissioner was the year 1970.

Q. Okay, in that election I believe you had previously been a city councilman for a number of years. Is that correct? A. Yes, I resigned from the city council. I was a city councilman from 1959 through 1970, July, 1970.

Q. Who were the candidates in 1970 that you ran against? A. There was Sherman Barnes, Mr. E.S. Cobb and Reed, John Reed.

Q. All right, sir, were you successful in that election? A. No, I wasn't. I come in third in a four-man race.

Q. So you were not in the runoff either? A. No, sir.

[1498] Q. Okay, when did you next run for county

commission? A. The next time I run was in the year 1974.

Q. Okay, who were the candidates in that election? A. That was Sherman Barnes was the incumbent at that time, and we had several other candidates in there but I don't remember their names.

Q. Okay, what were the results of the primary election? A. Well, Sherman beat me very badly in the primary but I was the second runner-up to him so we had to run it off in the runoff.

Q. All right, sir, in your campaign for county commission did you have any black persons who participated in your campaign or were interested in your campaign at all? A. Yes, Lawrence Green was in my campaign and you had a lot of people that got involved in the campaign, just coming by, volunteering, picking up literature, cards, whatever they could do to help.

Q. Were any of these people who were volunteering in picking up cards or campaign material black? A. Yes, some of them were.

Q. Did you make any kind of effort to determine [1499] who was coming by, picking up this stuff, passing it out? A. No, sir, I didn't. I just left it open for any body that wanted to pick up literature, to pick it up.

Q. Okay, what was the result of the runoff in your campaign against Mr. Barnes? A. The final result was I beat him by two hundred thirty-two votes.

Q. Two hundred thirty-two votes? A. Yes, sir.

Q. Okay, during that election did you actively solicit and campaign for votes in black areas and appear at rallies? A. Yes, I was a campaigner that went where I



was invited. Especially I was at a rally at Magee Field. That's on Alcaniz and Cross.

Q. Was that largely attended by blacks? A. Yes this was a rally put on by the black, a black organization, and I can't recall the name of it.

Q. Do you feel the black vote was a significant contribution to your election in 1974? A. Yes, sir, as far as I could tell Sherman and myself about split the black precincts. It was not overwhelmingly for me or him either one.

Q. Mr. Kelson, you were chairman of the Board of [1500] County Commissioners at the time the county considered the charter for the county as recommended by the charter study committee, is that correct? A. Yes, sir.

Q. Would you briefly describe to the Court how the commission went about considering the recommendation of the committee? A. Well, to start off with, you know, the commissioners tried to stay neutral in the election where we could probably have what they call a fair election if people wanted charter government, we'll let them vote it in. So we conducted these various hearings all over the county, which was a very poor turnout by the citizens of all areas. So at the conclusion of the hearings we come up with the document that we put on the ballot for the election by the people.

Q. All right, that final document contained a provision for countywide election of county commissioners. Was that consistent with the general, the recommendation of the charter committee? A. No, your charter committee was split on the recommendation of the charter that was submitted to the Board of County Commissioners.

Q. The majority report contained —

[1501] A. The majority report contained the district voting.

Q. Did you vote to change that back? A. I sure did.

Q. What was your reasoning? A. The simple reason, I feel if you run countywide you represent all the citizens of Escambia County, not just a district.

THE COURT: Well, if the law provided it, you would be doing it as a matter of law.

A. Yes, sir.

THE COURT: You're talking about as a practical matter if you run otherwise you simply can't do it?

A. Your Honor, you can do it, but I don't believe — if I was working in the district I would work in that district.

THE COURT: Well, from some testimony I've just heard you all still kind of split it up into districts and each of you looking after your districts and making decisions.

A. No, sir, not to my opinion.

THE COURT: Well, you heard it.

A. Yes, sir.

THE COURT: Do you agree with what Mr. Beck told me?

[1502] A. No, sir, I don't. I don't work that way.

THE COURT: You don't go out in your district and help select what roads to be paved and that kind of thing?

A. No, sir, I do not. When I was elected a commissioner, I asked engineering to send an inspector into my district and not any particular roads but make a list of what was needed in District Two.

THE COURT: I see.

Q. Mr. Kelson, do you feel that the interest of black citizens in Escambia County could safely be ignored and their request for county services be ignored and a county commissioner act with impunity and still be elected in Escambia County? A. No, sir, I don't think you could ignore not only black people but anyone and I don't think you should as an elected official.

Q. Do you feel that you represent adequately the interests of black citizens of Escambia County? A. Yes, I do.

Q. On the Board of County Commissioners. Mr. Kelson, as a county commissioner have you actively supported any black organizations that the county sponsors or any organizations that the county sponsors that aid predominantly black interests? [1503] A. Yes, I'm member of the CAP Agency. I serve on that particular board.

THE COURT: What is that?

A. CAP.

THE COURT: CAP?

A. Yes.

THE COURT: What is that? Civil Air Patrol is the only thing I know.

MR. LOTT: For the record it's the Community Action Program.

A. Community Action Program. We've got so many abbreviations.

THE COURT: Thank you. I can understand that, sir.

Q. Do you know Mr. Tony McCray? A. Very well, sir.

Q. Is he a black citizen of Escambia County? A. Yes, sir.

Q. Have you as county commissioner worked with him closely in any project? A. Yes, sir, in the POCD.

Q. What is that organization's function? A. Let me think and I'll give you the name of that one. That's People Organized for Community Development.

Q. Is that a neighborhood improvement program? A. Do what?

[1504] Q. Is that a neighborhood improvement program? A. Yes, it is. It's mainly in your downtown section area, that section of Escambia County.

Q. Mr. Kelson, you mentioned in your runoff election that put you in the county commission the difference between you and your opponent in the runoff in the Democratic Primary, the difference was two hundred thirty-two votes. Was there any Republican opposition in the general election? A. Yes, it was. We had one person qualified in the general election. I think I beat him around twenty-seven thousand votes to twelve thousand votes in the general election.

Q. Okay, during the Democratic Primary do you feel that the black vote could have swung the election to the other side or changed the outcome of the election? A. In the primary election?

Q. Yes, sir, the primary runoff. A. It could have.

THE COURT: You mean in the runoff? Is that what you're saying?

MR. LOTT: Yes, Your Honor.

A. In the runoff election.

MR. LOTT: Yes, Your Honor.

A. Yes, I think it could have.

[1505] MR. LOTT: Okay, no further questions of this witness.

THE COURT: Cross examination?

MR. BLACKSHER: Just one second, Your Honor.

### CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Do you think the white vote could swing an election, Mr. Kelson? A. Not for me it wouldn't.

Q. What? A. Not for me it wouldn't.

Q. It couldn't possibly swing it for you? A. No, I always depend on all citizens to elect, not just white people.

THE COURT: You just testified in a particular situation a black vote could have swung it. It's equally true a few more whites voting for you would have swung it. That's all you could have meant. A. What I meant, Your Honor, if you check the precincts —

THE COURT: If no more white voters voted for you, rather, if less whites had voted for you or some blacks voted against you it could have changed the result. In any close race in this county a swing vote of whites or blacks could change the result because we have enough black [1506] or white voters. A. Yes, sir.

THE COURT: That's about all you're saying, isn't it?

Q. I want to go back over something you said in regard to the charter government proposal and the proposed single-member districts. Didn't you testify just now that

there was a minority report from the committee which proposed at-large elections as opposed to the single-member districts in the majority report?

A. No, sir, they just opposed the charter as proposed to the commissioners, it was my understanding.

THE COURT: They opposed what, sir?

A. They opposed the charter as submitted to the commissioners, the two members of the charter study committee.

Q. All right, well, let's set the record straight because I got a different inference from your direct testimony. There wasn't any minority report of the charter study committee that proposed at-large elections as opposed to the single-member districts? A. No, sir. No, sir, not that particular one.

Q. The committee as a whole proposed single-member districts, right? A. The majority of that committee, yes, sir.

[1507] THE COURT: Weren't there two reports there?

MR. BLACKSHER: Yes, sir.

THE COURT: You're going into that. Go ahead.

Q. Yes, sir, I'll give the witness the reports that are already in evidence from the charter study committee report. The first one is marked 98 and it was the majority report submitted by the first committee. You remember there were two committees? A. Yes, sir.

Q. The second one is marked 99 and it's the minority report of the first committee. And finally the third one is marked 100 and it's the only report that was submitted by

the second committee. Now I just want to clarify whether or not there was even a single person on either one of those committees that proposed at-large elections. A. Well, I just assume if you have a report from some member of that committee that they didn't approve the report as submitted the first time.

Q. Well, if you'll look, I'll tell you what, look at that document in the middle marked 99. That's the only written minority report we have in the record, Mr. Kelson. Now look on the second page at the top and see what it says. The second page. That was the one submitted by Mr. Brosnaham, I believe. Correct me if I'm wrong. [1508] A. Yes, by Brosnaham, Mr. Brosnaham.

Q. Brosnaham, excuse me, I mispronounced it. Doesn't it say at the top that the minority is proposing five single-member districts? They don't even propose the two at-large seats that the majority proposed. A. Right, on their report. The only thing I knew, they objected to the original as submitted to us.

Q. Well, they objected to a number of things?  
A. Yes.

Q. But that wasn't one of them, was it? A. No, sir. No, sir, that wasn't.

Q. Okay. So once again what was your reason in the face of this proposal by your own committee for voting to change or to keep at-large elections rather than to change to single-member districts? A. I just felt that I can represent the people better at a countywide election.

Q. You could? A. Yes, sir.

Q. Okay, tell us why you felt you could represent whoever it is you wanted to represent in a countywide elec-

tion. A. For the simple reason if you're in a district I think you'd have more of a tendency to work with that district and that's all as far as I'm concerned. I just felt [1509] that if you were responsive to all the citizens of this county you're going to be responsible to them when they call you for anything that goes on in the county.

Q. We understand that argument, Mr. Kelson, and I guess you would acknowledge there's an argument on the other side that people representing just one district are going to have to deal with the other representatives as well, isn't that correct, just like a legislature does? The legislature manages to function somehow even though they are elected from separate districts throughout the state. They have to deal with each other, right? That's compromise. So there's two sides to that, right?  
A. That's true.

Q. Okay, sir. Now, were you aware of the fact that there were black citizens who were urging that the county commission keep the proposed change to district elections? A. The only ones I can remember is the ones at a meeting at the health center when we had several appear there.

Q. And they asked, they urged you to keep the district elections in the proposal as suggested by the study committee, correct? A. That's true.

[1510] Q. Are your concerns, what I want is to get you to tell us, explain to us how your political science concerns about how well you represent someone in an at-large system outweigh the concerns of a minority group who feel they're being shut out of the political process by the at-large elections. Which is more important in your mind?  
A. I don't feel nobody is being shut out as far as county government is concerned.



Q. Well, it's a government that blacks have been shut out of the county commission so far as being elected. That is something you can't deny, isn't it? A. No, sir, but I was shut out in 1970 too, if you'll bear in mind, and to me I was one of the most popular politicians in the Pensacola area at that time.

Q. Yes, sir, and if we put your batting average up over time I guess you'd be proud of it, wouldn't you? You did make it eventually. A. I made it because I went and tried and I learned something in the first election. I wasn't ready to get out here in a countywide campaign and I found this out in a hurry.

Q. Blacks have been shut out altogether, isn't that correct? A. I don't think so. Mr. Hollice Williams has been [1511] elected time after time.

THE COURT: He means on the county commission. As far as you know blacks have never been elected to the county commission, is that correct, Mr. Kelson?

A. No, sir, the only one I ever remember running is Mr. John Reed, who ran in the race with me, and he polled five thousand votes.

Q. He ran fourth at that time?

A. Yes, sir. There wasn't but four in the race.

MR. BLACKSHER: I think that's all.

THE COURT: Any redirect?

MR. LOTT: One question.

#### REDIRECT EXAMINATION

BY MR. LOTT:

Q. Commissioner Kelson, isn't it true that the decisions with respect to charter government and the change in

the committee recommendations all occurred after this law suit was filed?

A. That's true.

MR. LOTT: No further questions.

THE COURT: All right, sir. You may step down, sir, Mr. Kelson.

A. Thank you.

THE COURT: I've been telling them they're excused but these defendants are heading out. It's about time to [1512] take another break, I imagine, about a ten minute break. We'll take about a ten minute recess.

(Recess)

(Open court)

## TESTIMONY OF CHARLES DEESE, JR.

MR. LOTT: Call Charles Deese, Jr.

CHARLES DEESE, JR. called as a witness by the defendants, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, this is Charles Deese, Jr. He lives at 8500 Sharron Lane. He's a lifelong resident of Escambia County. He's forty-five years old. He's self employed in the business of residential design and general contracting and building. He's a member of the West Florida Home Builders Association. He's presently a county commissioner from County Commission District Five on the Board of County Commissioners of Escambia County Florida. The statements I've just made to the Court, are they correct, Mr. Deese? A. Sir?

Q. Are the statements I made to the Court correct?

A. No, sir, it's District One.

Q. I'm sorry, excuse me, District One.

[1513] THE COURT: It's correct otherwise?

A. Otherwise correct.

Q. Mr. Deese, when did you first run for the county commission? A. I first ran in 1972 and was unsuccessful.

Q. Did you reach the runoff? Did you run in the Democratic Primary? A. Yes, I did.

Q. Did you reach the runoff? A. Yes, I did.

Q. Who was your opponent in the runoff? A. Mr. Albritton.

Q. And you were defeated in 1972? A. That is correct.

THE COURT: You were defeated in the runoff, Democratic runoff?

A. Yes, sir.

Q. When did you next run for county commission, Mr. Deese? A. In 1976.

Q. Who were your opponents in that election? A. Bill McClellan, Raymond Lee, Herb Van Dyke, Harry Ham, Mr. Albritton, the incumbent, and myself. Six.

Q. What was the result in the Democratic Primary? A. In the Democratic Primary I was the, out of [1514] the six I was the front runner and then the runoff in the Democratic Primary, I was successful against Mr. Albritton.

Q. Mr. Albritton was the incumbent at the time, is that correct? A. That's correct.

Q. What kind of margin of victory did you have in the election? A. I believe Mr. Albritton's vote was, total vote in the runoff was eighteen thousand two hundred forty-six. My total was twenty-nine thousand nine hundred thirty-one.

Q. Okay, during the conduct of your two campaigns did you consider the black vote to be an important factor in the success of your election in 1976? A. Yes, sir, I did.

Q. Did you have any black citizens who assisted you in your campaign efforts? A. Yes, I did. Would you like the names?

Q. Please, sir. A. Okay. Mr. Lawrence Green took some of my literature and passed it out in the community. Mr. Gene Brown and Mr. James, I'm sorry, not James

Walker, I had a campaign meeting at Woerner's Restaurant some seventy-five or eighty people attended. I had approximately ten blacks [1515] attending that meeting. They took some districts to work and some literature and we all worked successfully together. During my campaign I had three blacks: Willie Mae Jackson, James Royster and Mrs. Elmore Benjamin, on the radio with campaign information. I also had Mr. and Mrs. James Walker doing telephone calling for me through their church efforts.

Q. Were they black citizens? A. Yes, they were. I'm giving you the names of the blacks at this time, if you would. I had a Mrs. Rafael Greer, Mr. Rafael Greer said he would ask his wife to do the telephoning for me, which I assume she did. Mr. and Mrs. Gene Brown were also heavy workers in my campaign. Reverend Callaway, I discussed the campaign with him and some of my other supporters discussed it with him and he was working for me. Mr. Elmore Benjamin also was very active, probably the most active of all the workers in my campaign in the black community, taking me to different functions in the black community.

Q. Okay, tell me about the functions and rallies and other public appearances you made in your 1976 campaign. A. Well, of course we've already discussed in previous testimony the Democratic rallies throughout the [1516] county. I attended all of them. Some of my black people attended these rallies also to assist me and pass out information. I went to the Royal Entertainers Club on Alcaniz Street on two occasions at their invitation. I attended a meeting at a black church on Gulf Beach Highway at their invitation and discussed my candidacy with several of their members. I went to, attended a black sorority meeting at the Sheraton downtown.

Q. Do you feel that the black voters in Escambia County were an important element in your overall constituency that resulted in your election? A. Yes, sir, I had everyone from one end of the county, black and white, working for me, I feel like, and I had a good working organization.

Q. All right, sir. Let me draw your attention for just a minute to the proposed charter that the Board of County Commissioners considered last year and the recommendation of the charter study committee to the Board of County Commissioners. Would you please describe for the Court the consideration the board gave to the charter proposal and how they went about considering it. A. Yes. The board was presented a majority and a minority report on the charter. At a later date a committee was set up to restudy the charter proposal and [1517] then present to the board. Because I was one of the newest commissioners at that time I was quite interested in just exactly what the charter contained, what it was all about, things of this nature. So I was placed on the committee to go over the charter word by word to see what needed to be adjusted here, there and yonder before giving any final presentation.

Q. Okay, the board, I believe, in previous testimony has indicated, it was indicated that the Board of County Commissioners changed the recommendation or did not accept the recommendation of the charter study committee to go to single-member districts but instead retained the present general at-large election of county commissioners countywide. Would you explain to the Court your reason behind supporting that. A. Yes, I would. The board, after we received the recommendation of the committee, the board then went over each of the points basically, went over the different points and chose various

and sundry things in the presented charter that were to be, upon their opinion, would be recommended to be changed. One of these proposals, and there were quite a few, but one of these proposals was to stay with the same type of countywide voting because it represented, each person was then representing all the people of the county rather than just their private districts, [1518] and on the opinion there it was possibly that the individual districts would go back to the individual little kingdoms where you would have individual commissioners having his own little works and not being receptive to anything else that went on anywhere else in the county.

Q. Okay, what was the issue on which you campaigned in 1972 and 1976? A. In 1972 basically, and in 1976, we had, as you know, I was running against Mr. Albritton and there was quite a bit of dirt road politics as such where the expression there came about where we had a one to one basis, individual commissioners one to one to the constituents, where we needed a commissioner that was more responsive to the total number of people rather than just the district. It was also called pothole politics, it's been referred to in several editorials and things of this nature. I campaigned that the people should be getting fair representation and that each commissioner should be responsive to the people of the county and also that there would be no political deals made and things of this nature. I was very much opposed to any back room politics, as another word, cliché' being used.

Q. How did the decision to retain at-large elections relate to your campaign theories? [1519] A. To my campaign what?

Q. Your campaign issues were dirt road politics and service to all areas. How did that relate to the particular

decision to retain at-large elections? A. Well, I think the people of this county want to have representation on the board and they want to be able to call any of their commissioners. I get calls from people all over the county. For instance Saturday morning at 9:00 o'clock I was in Molino. This is Mr. Beck's district. I was in Mr. Beck's district talking to some people there at their request and was taken up there by some other people who wanted to talk about it. Sunday at the church I was given a request to be taken care of. I don't know whose district this is. It's still in my pocket. I haven't taken it out. We get representations, we get calls from people all over the county. It's not just no one place or the other.

Q. All right, sir, I call your attention to the appointment by the Board of County Commissioners of the county budget and finance committee. Are you familiar with that? A. Yes, I am.

Q. Do you make any suggestions as to the persons to be included in that committee? A. Yes, I did. I made two suggestions. I made a [1520] suggestion and they were accepted. I recommended Dr. Donald Spence. He was accepted. And I also recommended Elmore Benjamin. He was accepted.

Q. Were these the only two recommendations?  
A. These were the only two.

Q. What are the races of those two gentleman?  
A. They're both black.

Q. Mr. Deese, could you briefly describe the character and boundaries of your residency districts? A. Excuse me one second, if you could. Could I make an explanation, if the Court would, as to why I appointed those two?

THE COURT: All right, sir, go ahead.



A. The other members, some of them had already been appointed and they were still being appointed and I recognized the fact there were no blacks on there at this time so this is one of the main reasons that I appointed the ones I had, plus one of those was a very strong worker in my campaign and I knew what his thinking was and I knew how straight he was. So I did appoint him and then also Don Spence. I learned to appreciate him in the campaigning time. I had no knowledge of him otherwise. So I met him at the campaigns and I appreciated his attitudes.

Q. Okay, would you briefly describe for the Court [1521] the boundaries of your county commission residency district and the character of it. A. Yes. Basically I start somewhere near Pensacola High School and go over to Palafox and go north on Palafox to approximately Interstate 10 and then we'll go west along the centerline of Interstate 10 to Ashland Avenue, then turn north up Ashland Avenue to approximately ten mile road where there is a creek in there. Then it follows the boundaries of the creek west until it gets to Interstate 10 and then follows it on Interstate 10 on out to the west till we get to the Perdido River, which is Alabama. On the south, taking from Pensacola, Pensacola High, going west, we will go out through some portions of Brownsville and out Mobile Highway till you hit Sauflay Field Road, turn left on Sauflay and go west on Sauflay to about Sauflay Field and then it more or less follows a boundary line of a creek, something of that nature, across the back side of Sauflay Field. It is divided up in farm land, suburban area and, as you know, something in the black and white mixed district down around Pensacola High School.

Q. Are there any unpaved roads in your district?

A. I have approximately, well, I had approximately fifty miles of unpaved road in my district. That was [1522] before last year's paving.

Q. What was the paving, what did the paving program in your district consist of last year? A. Okay, the roads that I paved in my district, Wymar, the west side, I'm sorry, the east side of George Stone School going north, tying into Interstate Circle, going west and tying in and stopping at Pine Forest road. Now, this is a leader road that is, there are white residents living on this road but it's not heavily populated along either one of those roads, especially the Interstate Circle Road, but there are leader roads and tie-in roads that will take the traffic away from George Stone School. They represent some 49 percent of my paving. Then I paved Longleaf Drive from George Stone School to the east, tying in to Rolling Hills Road, which represents 48 percent of my paving.

Q. Okay, Mr. Deese, as to that 48 percent of your paving budget for 1977 as it relates to Longleaf Drive, what was the predominant character of the neighborhood in the area served by that road as far as racial composition?

A. From George Stone School to the east we have approximately four white residents and then it goes on to the east and ties in and opens up the back side, the west side of the Wedgewood area, which is predominantly [1522] black. This gives the Wedgewood residents a west direction to go to the Navy Yard and west to go west and then north on Pine Forest to St. Regis or south from Pine Forest to the other parts of town and also gives them good access to George Stone School where a lot of their people go.

Q. What is the racial composition of the people that benefit directly and primarily from that 48 percent of your budget? A. Eighty percent black.

Q. Okay, you mentioned Rolling Hills Road. We had some testimony about this earlier in the trial. Are you familiar with any complaints that have been made to you or to the Board of County Commissioners concerning

county commission requests for services in Rolling Hills Road? A. Yes, sir, I have, and I'll be glad to go over these, if you would like. I will give you, for instance, I have five reports here from a Reverend Ford on Rolling Hills Road, about six. These were taken care of immediately. I have here starting 10/11/76 from Mr. Maxwell, one of the plaintiffs, "Request grading road and filling holes," on 10/11/76. This was taken care of and dated 10/12/76. I have from Mr. Maxwell dated 6/21/77, request to grade the shoulder of the road and also repair road. This was taken care of on 7/20/77, "Repaired road, grass shoulders as requested." I have a request from Mr. Maxwell, 9/16/77, request to put dirt on the north end of the road and also round the road and repair it to mail box, and the request states that, "Put dirt on the road and graded." I also have a memorandum that I attached to this to Mr. Mooney, Executive Director, and I'll read it. It says, "As per attached copy of work request and response of Mr. Maxwell, came in this morning not to complain about the work but wondered if the work had been inspected to see if it had been done properly. Also was concerned about the lack of coordination between the road department." And we'd been getting complaints along the same lines. Rolling Hills Road again, October the 10th, Mr. Maxwell, request of the same nature. January 1, '78, Mr. Maxwell requesting grade the road. This was on 1/9. The road was graded on 1/13 per request. Mr. Maxwell requested February 3rd, '78, "Road is washed out, needs crowning, filling and grading." On February the 10th the road inspector's investigation said that they cut the mud off the road and leveled up the same. On February the 13th, and this came from Reverend Ford, I've got it mixed up in here, requesting road repair, the same road, on the 13th of May; it said, "The crew went out on the 13th and made a mess. Please check and correct." The request was,

[1525] it was repaired as per above request. Mr. Maxwell on February the 15th requested put swale at each side of the street, crown and grade the road, repair at the mail box, road foreman to contact Mr. Maxwell. The board, it was signed off by the road supervisor that it was just completed —

THE COURT: Instead of going all through these, they speak for themselves. Put them in evidence and he can save time in his testimony. How many more of these do you have, Mr. Deese?

A. Your Honor, I have a bunch of them. We can take care of them in a day or two.

THE COURT: Why don't you put them in?

A. They're basically the same.

MR. LOTT: We move at this time for their admission, if there's no objection. They weren't on our exhibit list.

THE COURT: We can go over and over these things.

A. Yes, sir.

THE COURT: Do you have any objection to them coming in this way? They speak for themselves.

MR. BLACKSHER: I think I understand Your Honor's concern but I think in fairness if we'd had the opportunity to see these documents before trial we could have checked behind them to see what was going on and be prepared to [1526] respond to them.

THE COURT: Mr. Deese, go right ahead, sir.

MR. BLACKSHER: But, Your Honor, I'm as concerned as you if we're going to go through all these. We merely request the opportunity to come back and cross examine later, if we may.

THE COURT: Well, I don't know what you want me to do.

MR. BLACKSHER: If you're going to put them in evidence, give us —

THE COURT: Since you're objecting to it this way I'm going to let him go right on through and you can cross examine. Mr. Deese, I'm sorry I lost this time. You go right ahead.

A. Thank you, Your Honor.

Q. Mr. Deese, you may continue to try to summarize, if you can.

A. Sir? I'm sorry.

Q. You may continue, but summarize if you can.

A. All right. I'm sorry. I have a letter here from mail delivery service to Mr. Maxwell stating that service there was going to have to be discontinued due to the fact that the road was in the condition that it was in. The next day, I believe it was, after this date, we had a meeting of the county commission. Mr. Maxwell and [1527] Mr. Stokes, the plaintiffs, appeared before the board and requested that something be taken care of immediately, especially due to this letter, which I did submit to the board. And at that time the board agreed that they would authorize special work day to be done and that was on Friday. Now, the road camp does not work on Friday. We work four ten-hour days, so on this day of Friday the work crews came out at an overtime pay and took care of the problem that existed at the location. February the 22nd we have a similar situation. February 29th it was taken care of. March the 3rd, the 6th, we have a similar situation. March 17th it was taken care of. Now we get into Mr. Stokes' requests and we have a similar situation, Your

Honor. Basically these things are all the same, daily reports, requests, daily returns, daily taken care of.

THE COURT: Maybe we can stop on that and that gives Mr. Blacksher enough to cross examine on.

MR. BLACKSHER: Yes, sir.

THE COURT: All right, sir, go ahead, Mr. Lott.

Q. Okay. Mr. Deese, what was the race of the persons who were requesting these services from the county?

A. These services?

Q. Yes, sir. A. These were from the predominantly, from the [1528] black community, and it was from Mr. Stokes and Mr. Maxwell and Reverend Ford, all of the black community.

Q. Okay, and how many of those requests have not been responded to with the requested action? A. Here's my folder of the pendings on Rolling Hills Road and there it is and this request was made by Eugene Brown and the request was to repair the shoulder of the road and the cost was about thirty-five dollars and this would be, this was dated May the 3rd and it was taken care of on May 9th. I just found this out. So it has been taken care of also.

Q. So there are no outstanding requests that haven't been responded to, is that correct? A. As of Friday afternoon there are no responses, no requests that we have not responded to immediately.

Q. Mr. Deese, about how long ago did these requests start? A. Well, I can look back on my list and give you basically the earliest date. Now, bearing in mind I'm a new candidate in office as of '76. I have the first one here, 10/11/76. Now, that is —

THE COURT: That shows you how far back they went?

[1529] A. That is prior to my taking office but these dates have been —

THE COURT: Okay, the first one you have is October 10th, 1976?

A. Yes, sir.

THE COURT: Go ahead, Mr. Lott.

Q. Mr. Deese, did the fact this law suit was filed have anything to do with the county's response to those requests after the date of initial litigation? A. No, sir. In fact it was about a week and a half ago that I realized that Mr. Stokes and Mr. Maxwell were one and the same. I didn't check them with the suit and I have no reason to worry about it one way or the other because I treat all the same.

Q. Mr. Deese, do you consider responding to requests from black citizens as well as white citizens a responsibility and a keeping of your campaign promises? A. Yes, sir. I took an oath of office to serve the people of the county, not to serve the white people.

Q. Do you feel that you represent fully the black interests as well as the white interests of the citizens in Escambia County? A. I do my very best to do this and I hope that they feel the same way.

Q. Do you feel that you could safely ignore in a [1530] campaign or in an election the needs of black constituents and feel comfortable about going back to the polls? A. Absolutely not.

MR. LOTT: No further questions.

THE COURT: Mr. Deese, if you took an oath in a single-member election you would still be taking an oath to serve the people of the county, not the people in your district. Could you comply with your oath in this situation and could you comply with it in that situation?



A. Your Honor, the only thing —

THE COURT: We have, we have the State of Florida with all our legislators; they serve the people of the State of Florida under their oath, and in a single-member election district you would take that same kind of an oath.

A. Yes, sir, but is it not true that maybe Bob Sikes feels a little bit more about Northwest Florida than he would South Florida?

THE COURT: Well, that's what you're saying but beyond that you would feel that a little bit more about your district right now because you talk about "my district and my roads" and you're only a resident in that district.

A. Yes, sir, that is correct. The district, my [1531] office handles the majority, it's a clearing office for the complaints and anything that comes in from that district. However, that doesn't mean that we don't go over in other districts, as I stated earlier.

THE COURT: You would in the other kind of election too. Another thing, haven't you and the county, under the law as I understand it in Florida you're supposed to be a policy-making body and you've got your people down there under you. You've gone to an administrator, have you not, as I understand it, some ordinance not too long ago, you all went through something and delegated and spelled out that you have an administrator. If you don't like him you get rid of him, but he's your detail man. Yet from what you tell me you take on details yourself. These people that come to you, you don't say, "Now, what you need to do is go down and talk to our people because they take care of the day to day details"? You don't do that?

A. No, sir, because the people of this county say, "I voted for you and I want to speak to you. I don't want to speak to your secretary, I don't want to speak to Mr.



Mooney, I don't want to speak to anybody but the commissioner I voted for." And therefore what are you going to do? Are you going to say, "I'm sorry, I'm a policy maker"? I represent everyone that comes into my [1532] office.

THE COURT: In other words you're not a policy maker in practice even though in law you're supposed to be in your judgement?

A. By law I'm supposed to be a policy maker?

THE COURT: That's what I thought you were supposed to be. We'll find out about it. I thought the Board of County Commissioners sat as a policy-making body and the details of the work went on with the staff. That theory is there with the school board. It's supposed to be policy-making with the superintendent being the administrator. I thought you all had the concept in law. Maybe I'm wrong.

MR. LOTT: Your Honor, under Florida law the county commission has historically been both a legislative and administrative body. To the extent they desire they may appoint an administrator to handle such duties as they deem desirable to appoint to him but under Florida law the county commissioners are both administrative and legislative. The only function that is separated as far as the government of the county is concerned is the judicial.

THE COURT: I see. But this board has recently tried to divorce itself more from administrative work and get more in the policy-making areas?

[1533] MR. LOTT: To the extent they adopted the county administrator's format. However, the county administrator's format permits the county to delegate as much authority as it sees fit to an administrator and retain as much as it sees fit.

THE COURT: I see. Well, that clarifies my thinking in that respect and that leaves you in that position.

A. Yes.

THE COURT: And that would be a reason you think you ought to stay on a general election even though you work in and out of a district and come back and forth?

A. Yes, sir.

THE COURT: Go ahead.

### CROSS EXAMINATION

BY MR. BLACKSHER: To sum up the county administrator ordinance that the county commission adopted, it delegated the authority to the county administrator hiring people and doing things in the central offices but the county commissioners retained for themselves the prerequisite of deciding which roads in their residency districts would be paved, is that right? A. Those roads are recommended by the commissioner and the engineering department because there's no way that [1534] I could take that, to give you a total recommendation on a road without the input from the engineering department, because they figure up how much it's going to cost. Now —

Q. Well, what I was saying, Mr. Deese, is whereas under your ordinance that Mr. Lott was talking about the commissioners can't go behind a decision made by whoever the administrator is to hire or fire somebody, that is not true with respect to roads; the county administrator doesn't decide where the roads are going to be built or repaired. That's something that you still participate in to a large extent, is that right? A. We make the recommendation to the board and the full board votes on which

roads will be paved. They are divided into districts because of the sheer working conditions of the road camp people.

Q. Well, how often does the full vote of the board overturn the decisions made by the individual commissioner about which roads in his district within the budget allotted to you will be paved? A. Any time you have a three to two vote.

Q. Well, I understand that the majority is three to two. Mr. Deese. A. Yes, sir.

Q. But I asked you how many times does that [1535] happen?

THE COURT: To your knowledge has it happened at all where one was overturned, a recommendation of a commissioner?

A. Not to my knowledge.

THE COURT: Since you've been there you don't remember it happening?

A. There was a recommendation that a certain road be paved in my district this past year. I did not desire to participate in it so another commissioner did pave that road in my district with his money.

THE COURT: You mean he made the motion?

A. Sir?

THE COURT: He made the motion it be paved?

A. Yes, sir.

THE COURT: But he knew you didn't want to make a motion for some reason?

A. No, it was not on my list that I was going to recommend.

THE COURT: I see.

A. So he added it to his list.

THE COURT: I see.

A. He paved it with his money. Thank you.

THE COURT: With his money?

A. His money.

[1536] THE COURT: There you go again. The money is to be spent in his district and money to be spent in yours. It's almost a single-member election concept in that thing, isn't it, Mr. Deese? It's hard to get away from it?

A. Well, if it were that way, Your Honor, I would think that commissioner would be very jealous of his area and would not want to spend money in my district. He'd hold his in his district.

THE COURT: Well, it could be. It might work out that way.

A. Your Honor, a long time ago we had those type things, little kingdoms.

THE COURT: I know you did. There's a lot of history in it. Go ahead.

Q. Mr. Deese, I need to understand whether the work requests you were reading with respect to Mr. Maxwell, Mr. Stokes, Reverend Ford, concern the same road.

A. Yes, sir, that section they're referring to is a little over a block long.

Q. Well, I counted, I tried to count, I got something like seventeen work requests beginning in October of 1976 up through, well, you've got one that hasn't been answered there. Now, isn't that a little bit high incidence for one block needing repairs? [1537] A. Yes, I really believe it is. I think it's an imposition on their part to call for the

same thing to happen, both of them calling and getting exactly the same thing. When the road needs paving, when the road needs working, it appears all three of them get together and call. I don't know it, to be frank, and it appears all three call and we would have three requests. This is overtaxing the county personnel to have to have these working crews run out this way.

Q. Do you have indication there these requests were not well founded, the work didn't actually need to be done and somebody just went out there and looked at it and said, "It's all right," and turned around and came back? A. No, sir.

Q. So they did some work every time they went out there, right? A. They were in the process of doing the work while they were also being called for the next day's work.

Q. Well, I don't - A. The dates prove that.

Q. Pardon? A. The dates show that. They'll be working out [1538] there today to do yesterday's or two days ago's request and at the same time getting another request to do something else possibly.

Q. Well, have you done any inspection or asked your engineers to do any kind of investigation to find out what the general problem is with this road that it requires such constant upkeep and maintenance and why it's deteriorating so fast? A. Yes, we have. It is an area that is going down a slope. At the end of the road is a swamp. There is a spring that is on the east side of the road that is giving a lot of trouble. We have taken many truckloads or yards, we'll say, of gravel out there, which we normally don't put on the road, to try to get this water moving. I consulted with our road superintendent as to

what was being done. He said we needed some way to get the water across the road and still not mess up these people's property. Any time that it rains real hard it's a funnel area.

Q. How about paving? A. Be glad to pave it. We need some money to pave it with. We need some twelve thousand dollars to pave that section.

Q. I see. And that money is not available? A. At this time it's not available.

[1539] Q. Is there any money available for paving anywhere since October, 1976? A. Since October when?

Q. October, 1976. Has there been any money available for paving anywhere in your district? A. Oh, yes. I paved primarily the feeder roads, as I stated before.

Q. The high traffic roads? A. The high traffic roads, which is the other side of Rolling Hills Road, ties in, that carries these people to the area.

Q. And those roads you testified about are used primarily, among other things, by school buses? A. Absolutely. This is taxpayers' money we're tearing up the buses with so I'm trying to protect the taxpayers' money in the form of protecting buses.

Q. I think you also testified, Mr. Deese, that you were proud to have appointed Dr. Spence, and was it Reverend Benjamin? A. Elmore Benjamin.

Q. Elmore Benjamin. To one of the boards? A. That's correct.

Q. That you were mentioning, and I can't remember the name of it, and you said that you thought there was a

need to appoint black people because there had [1540] not been any on that board before. Is that what you said? A. This was a brand new board and it was in the process of being appointed.

Q. Okay, sir. Did you make that observation with respect to boards and committees generally appointed by the commission? A. I've had no reason to appoint anyone else.

Q. Well, are you implying by what you said about all the paving you've done in these black neighborhoods or the improvements you've done in these black neighborhoods by appointing blacks to a board and committee that your predecessor in office wasn't sensitive to or responsive to blacks and you were making up for that? Is that what your inference is? A. I didn't indicate anything about my predecessor.

Q. You're not saying then that you felt the need to do some catching up for black folks in your district? A. No, sir.

Q. So you haven't given them any particular preference over white people in your district? A. No, sir.

Q. And for the instances that you gave us of [1541] having prepared a road in a black neighborhood you could give us many others for having done the same thing in a white neighborhood, is that correct? A. Your percentages will prove that I paved 48 percent on Longleaf Drive, which serves, I paved 21 percent on one, 3 percent on another, a total of 100 percent. I had seventy-nine thousand two hundred seventy-eight dollars to work with.

Q. Those were throughways you're talking about, right? You're counting as a black area those residences in

and around a thoroughfare that has been paved to facilitate traffic from Pine Forest Road south and so forth, right? A. Right.

Q. All right. A. From George Stone School.

Q. Let me talk to you a few minutes about the charter study committee and the charter proposal, please. Isn't it a fact you were a member of the second charter study committee that was appointed by the commission? A. I've already testified to that fact.

Q. I'm sorry, I didn't understand that you were on that committee. A. Yes, sir. Now, wait a minute now. Don't get it confused with the majority and minority committee [1542] that formed the charter government.

Q. That was the first one, and you weren't on that one? A. I was not there. I was not even elected. I was on a committee that was to study the proposal and then come back to the commission with recommendations.

Q. All right, sir. A. And we did study that word for word.

Q. In plaintiffs' exhibit 100 is the report of that second study committee of which you were a member, am I correct? It was so identified my Mr. Tennant.

THE COURT: You were a member of that committee, Mr. Deese? That's what he's asking. A. Your Honor, I'm, the front of this thing confused me a little bit because there were two of these. I believe one of them did say majority report.

THE COURT: This is the second one. A. Do we have two of them just like this except one of them says majority report?



THE COURT: Can you look at that thing and see if you're a member? A. There are no names on it.

THE COURT: I think the testimony says that was a unanimous report.

[1543] MR. BLACKSHER: That's correct. The testimony Mr. Tennant gave - A. Okay.

MR. BLACKSHER: Was that there was no minority report from the second committee. What's marked as 98 is the majority report from the first committee and that looks something like that. A. Yes, sir.

THE COURT: This is the committee you served on? A. Yes, sir.

THE COURT: Are you finished with this?

Q. Yes, sir. Well, now, that committee report also proposed single-member districts, isn't that correct, Mr. Deese? A. I believe it did.

Q. Okay, sir, and you were a member of that committee? A. Yes, sir.

Q. And you didn't file a minority report, did you? I mean you were in favor of that proposal. That's what I'm getting at. A. I did not object to it.

THE COURT: Well, that being so, you agreed to that report as it went in but you voted otherwise on the commission? [1544] A. The commission, the thing that we voted on, on the report, we took the other report that he had -

THE COURT: Dr. Deese, all I'm saying to you, sir, is that Mr. Tennant had said this is unanimous. You say you didn't object to it so I suppose that report went to the committee as a report you approved. A. Yes, sir.

THE COURT: And it recommended single-member districts? A. Yes, sir.

THE COURT: On the commission, however, you voted otherwise? You did not vote for single-member districts? A. Your Honor -

THE COURT: Is that correct? A. We, if I could -

THE COURT: I'm just asking if that's correct, and then you may explain, of course. A. Yes, sir, it is correct. If I may qualify my statement.

THE COURT: All right, sir. A. When we voted, we made one vote and it covered a multiple of changes to this report. It didn't single out and vote individually on each thing it covered. One vote covered a multiple so I didn't single out and vote [1545] against or for the single-man district thing. It was a multiple of things that were changed.

THE COURT: It still remains you didn't feel strongly enough about the situation in your committee, at least, to come in and talk about it and file a minority report. A. No, sir.

THE COURT: Perhaps you don't feel too strongly one way or the other about the entire situation. Is that right? There are merits on both sides of it, is that what you're saying? A. Yes, sir, in this situation.

THE COURT: Merits on both sides, single-member or at-large? That's what you're saying. But you did change and vote - A. In the full vote.

THE COURT: How's that? In the full vote you changed that? A. Yes.

Q. Given the fact that there are merits to both sides from a political science standpoint, Mr. Deese, wouldn't

you be in favor of voting for that forum that gave minority groups such as the black citizens of this county the best opportunity for full representation? A. I'm sorry, I'm not a political science [1546] expert. I don't believe I could answer that. I have been elected to office but I'm not a political science expert.

MR. BLACKSHER: All right, sir.

THE COURT: Redirect, Mr. Lott?

MR. LOTT: Just one question to clarify something Mr. Deese testified about on cross.

#### REDIRECT EXAMINATION

Q. Mr. Blacksher characterized the road that you paved with 48 percent of the money and you had said was for the benefit of the blacks. Let me get up to the mike. A. Please.

Q. Mr. Blacksher had characterized as a thoroughfare road the road that you had testified was to the benefit of blacks. Does that thoroughfare road lead from a county road system directly into a predominantly black neighborhood? A. Yes, sir, it does.

Q. Does it exist on the other side in a thoroughfare style? A. It goes through the community and comes out on Pensacola Boulevard, which through the black community is basically paved all the way to Pensacola Boulevard but the [1547] west side of the Wedgewood area has no paved, had no paved outlet to the west for Navy Yard people, George Stone people or people going to St. Regis to work the back side, or the Southern Bell Telephone, which is on that west side, either. There was no paved access.

Q. Is it a thoroughfare road used principally for the benefit of the black neighborhood? A. Yes, sir. Well, I would say that blacks and whites will use it. It does create a good road to take the buses to the east from George Stone School area.

MR. LOTT: No further questions.

THE COURT: You may step down, Mr. Deese. Call your next witness, Mr. Lott.

MR. LOTT: We call Jack Kenney.

#### TESTIMONY OF JACK KENNEY

JACK KENNEY,  
called as a witness by the defendants, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, if it please the Court, this is Jack Kenney, who resides at 1199 Ellyson Drive. He's resided in Escambia County for twenty-three years. He's forty-eight years of age. He's self employed in the advertising business. He's the county commissioner presently serving in the Board of County Commissioners for [1548] Escambia County, residency District Four. Are the statements that I've just made to the Court true and correct, Mr. Kenney? A. Yes, they are.

Q. Mr. Kenney, when did you first run for county commission? A. Nineteen seventy.

Q. Who were your opponents in that race? A. The incumbent was W. A. Davis. The other Democratic opponent was Nathaniel Dedmond.

Q. Was this in the Democratic primary? A. Yes.

Q. What's the race of Mr. Dedmond? A. He's black.

Q. Okay, what was the result of the first election in the primary? A. I won.

Q. Was there a runoff? A. No, there was not.

Q. You received a majority of the votes? A. Yes.

Q. After the election did you have occasion to have a conversation with Mr. Dedmond concerning the election?  
A. Yes, we had several.

[1549] Q. Did he make any statements to you concerning his basis or his feeling for his defeat in the election?  
A. Only one.

Q. What comment was that? A. He said words to the effect, "My own people didn't support me."

Q. What did you take that to mean under the circumstances and context of what was said? A. I never have been able to really be sure whether he meant that the black community did not vote for him or the black community did not turn out to vote at all or in relatively small numbers.

Q. All right, sir. How did you conduct your campaign in 1970? A. It was basically a media campaign, primarily in the electronic media, since that was my area of recognition and expertise.

Q. Did you appear at any rallies or church congregation meetings which were organized for or for the benefit primarily of black voters? A. I appeared at all of the scheduled Democratic rallies. I don't believe that in the 1970 election, I don't recall that there was a rally set up by any specific black organization per se.

[1550] Q. Did you appear at any predominantly black churches to speak? A. Yes, I did.

Q. Did you have any black persons who assisted you in your campaign? A. Yes, sir, I did.

Q. Who were they and what was the nature of their support? A. They were mostly assisting me in the area of distributing pamphlets, information, introducing me to black groups such as churches. I don't recall that we had any telephone committee type of organization. It was not a formally organized campaign as such.

Q. Okay, now let's look at your campaign in 1974. Basically what kind of campaign was that? A. It was also basically a media campaign around somewhat the same issues and some of the issues that had come up in my four years previous experience.

Q. Did any black citizens in the county assist in your campaign in that election? A. Yes, they did.

Q. Okay, who were your opponents in that election? A. In that election the opponents were Harry Ham and Tom Bailey in the Democratic Primary and Christopher Henson, a Republican, in the general.

[1551] Q. Did you win the Democratic Primary on the first ballot? A. Yes, sir, I did.

Q. You defeated the Republican in the general election? A. Yes.

Q. What were the issues that you felt were particularly notable in the '74 election? A. I think the fact that I had at least made great strides toward following up and accomplishing the only real promise I made in terms of the first election and that was the establishment of a county-wide bus system. That was the primary thrust of that campaign.

Q. Okay, could you give the Court a brief history of the development of the bus and how it benefits the people of the county? A. The City of Pensacola had a management agreement with American Transit Company to run a bus system within the City of Pensacola. They found this no longer economically feasible so they dropped the bus system and for several months we had no bus system. I felt that government owed mass transit services to its people and campaigned on that basis and was thus appointed as chairman of a joint city-county-legislative delegation transportation committee and our charge was to investigate [1552] the possibility of establishing a county bus system. We proceeded with the presumption that such a system was needed and it was a government function, and how the best way to fund it was really our charge so we applied for federal funds from the Urban Mass Transit Administration for the acquisition of fourteen buses and the allied equipment. After the usual time for red tape and so on the grant was made and the buses were purchased and we started a county bus system under the auspices of the county and the city on a diminishing city bases.

Q. All right, sir, now you identify this as one of your campaign issues in '70 and 1974. Would you say that the fulfillment of that campaign promise was something you felt was necessary as far as your political future was concerned? A. Well, I operate on the principle that you don't promise anything you can't deliver and you'd better deliver everything you promise if you want to be reelected, so I feel it was vital.

Q. Okay, what is the characteristic makeup of the people who use and ride the Escambia County Transit System, if you can make such a generalization? A. Generally speaking I would say they are of the lower income bracket.

[1553] Q. What is the racial composition of those who use the Escambia Transit System predominantly? A. I don't think we've made any surveys to that extent. It would strictly be my own opinion and riding on the buses. It would indicate probably 75 percent black.

Q. How was the scheduling of routing determined as to where the buses would go? A. Basically it was determined in the areas where the lower income people lived or were trying to get to, taking into account requested routes by petitions. We had several, many, many areas, neighborhoods, if you will, that said, "We would like a bus system." We tried to run the buses there and are still running in many of them depending on the ridership and the availability of buses.

Q. Can you characterize the areas that are predominately served by the routing of the bus system? A. Well, I think that from the general downtown area it would be characterized as heading in the spokes of a wheel to and from the downtown area. We do run one route to the Naval Air Station. Generally speaking the rest would go to East Pensacola Heights, all the way out towards the Ensley area. We also have a bus that runs from Century to Pensacola.

[1554] Q. All right, sir, is this venture by the county a profit-making operation? A. No, sir.

Q. What kind of expense deficit is incurred by the county? A. I don't have the exact figures but I would estimate somewhere in the neighborhood of three hundred thousand dollars per year deficit.

Q. And what is the purpose of funding the deficit as opposed to increasing the fares? A. There is a sort of a diminishing return. We found that if you increase the



rates, the fare rate, beyond a certain point, you decrease the ridership. And therefore increasing the rate does not increase the revenue. In fact it usually decreases it. We tried to hit a happy medium.

Q. Does the bus system operate solely within your residency district as a county commissioner? A. No, sir.

Q. Does it serve predominantly your area or residency district? A. No, sir.

Q. To what do you attribute the concern of the bus system as a commissioner from your residency district since it doesn't serve particularly your area? A. [1555] Well, I have been elected on a countywide basis and I feel it's my responsibility to serve the people of the county wherever they may live.

Q. Have you particularly sponsored any other county projects that are outside of your own district? A. Well, I have one now that I'm working on now and have been for a year or so, the creation of an artificial reef which is actually in the water and I guess it would be the commissioner's district in the Santa Rosa Island area if it were in any specific district. This is a countywide effort to which I've devoted a lot of time.

Q. Going back to your election and the constituency that you appeal to, could you basically describe for the Court the importance you attributed to the blacks in your 1970 campaign and your 1974 campaign for county commission as far as a component in your constituency to win an election? A. Well, in 1970 I was a little naive about how you put together a political organization. I didn't have one per se but I did have volunteers, both white and black, who suggested they might help in a certain way. I gratefully took them up on this. This was a learning ex-

perience for me so that in 1974 I tried to organize in a better manner and went to leaders of the black community and [1556] said. "Do you find it possible to support me and I will appreciate that support if you think I've done a good job." I think that the contributions that they made, particularly in the 1974 campaign, were significant.

Q. Do you feel that as a county commissioner you've adequately represented the interest of black citizens in the county? A. I've certainly tried to.

Q. Do you feel that the black components of the constituency in the county could be safely ignored by you in a campaign and insure your election? A. I'm sure it could not.

Q. Are you aware of any particular projects by the Board of County Commissioners in the area of paving that have benefited the black citizens of the county? A. There is one in particular that I've been involved in just recently that comes to mind first.

Q. What is that? A. That's in the area in Cantonment, Welcome Circle.

Q. Were those funds that were appropriated by the Board of County Commissioners? A. They were funds from my paving district.

Q. In other words you used funds that were allocated to your district in the Cantonment area? [1557] Is the Cantonment area in your district? A. No, sir, it's not. If I might explain, my district is basically on the east side of the county near the airport. We do not have the amount of unpaved roads that some of the other areas do. And even though my percentage is lower than some of the others I usually can take care of the most crying needs of

that district and have some left over to contribute to some of the other commissioners where they need it.

Q. Are you familiar with the community development block grant program that the county operates? A. Yes.

Q. Do those funds come to the county without substantial effort on the county's part to receive them?

A. No, there's substantial effort.

Q. Once they're received is there any requirement that they be allocated to any particular area or does the board decide what area will be benefited within the guidelines of the grants? A. It has to be within the guidelines of the grant.

Q. Mr. Kenney, the plaintiffs have made some contentions about the advisory boards and committees and number of blacks that are appointed to them. Could you explain what your experience has been with regard to [1558] appointment of blacks to advisory boards and committees? A. Most advisory boards in my experience have been appointed by individuals who have demonstrated an interest or expertise in a certain area. They have demonstrated this interest by civic work, by attending meetings, by actively showing this interest in a positive way. They come forth and, if not volunteer, at least show their willingness to become an active part of the community in terms of helping in an advisory way. Most of the advisory committees are made on that basis, of, "This person has expressed an interest or desire to serve."

Q. Are you aware of any black citizen who's expressed an interest on being on such an advisory board or committee that has been refused? A. No, sir, I'm not.

Q. Mr. Kenney, there's been some testimony today

concerning the proposed county charter that was considered by the board's charter committee. Would you please explain how you voted as a member of the board and what factors you considered in reaching your decision. A. I voted for countywide representation. I voted for it basically on the premise that there are issues and problems that transcend district lines and perhaps did [1559] not exist, these problems did not exist in, prior to 1950 when the old road boards were in operation. The issues such as the transit system which I've just talked about in my opinion could not exist under a district vote where an individual commissioner, if he did have the idea that a transit system should be put in, would probably only be able to put it in his district, which would not be a transit system at all. The artificial reef is another thing. The water and sewer problem, the drainage problems that cover vast areas. Many of the urban problems that the county is faced with today it was not faced with several years ago. These problems in my opinion can not be solved without a countywide representation.

MR. LOTT: No further questions, Your Honor.

THE COURT: Cross examination?

### CROSS EXAMINATION

BY MR. MENEFEE:

Q. Commissioner Kenney, my name is Larry Menefee. I'm an attorney for the plaintiffs. Is Mr. Dedmond a respected member in the community? A. Yes, he is.

Q. Known for his truth and veracity? A. Yes, sir.

Q. Were you in the courtroom when he testified [1560] the other day? A. No, sir, I wasn't.

Q. Would you agree with his assessment that the black has little chance of election, that the present at-large system operates to exclude blacks? A. I can't entirely agree with that, no. There have been several cases where it's been a close race.

Q. All right, sir. Have you ever studied this statement that you attribute to Mr. Dedmond, have you ever studied the results of that election to try to gain some understanding of what he meant? A. Yes, I have, not in great depth. I studied it to the extent of finding out what sort of numbers he had and what sort of numbers I had. I'm not really that familiar with an individual precinct to say this all went for me and this all went for him. All I know is I got all the precincts.

Q. That was in 1970? A. Yes, sir.

Q. Mr. Kenney, our statistical analysis indicates that in the 1970 elections, though the black turnout rate was below the white turnout rate in virtually every election that year by a substantial margin the black rate as to the Dedmond-Kenney-Davis race was, how shall I phrase [1561] it, much, much, closer, much more equal to the white than in any other election run that year. The figures we have indicate a fall-off in the black participation of .39 in your race with Mr. Dedmond whereas other elections show black fall-off rate of .77, .51, .73.

THE COURT: I doubt if he knows what fall-off rate is. Maybe you better refresh us both. What are you suggesting those figures show? You're getting into statistical theory with him.

MR. MENELEE: Yes, sir.

THE COURT: What's all this going to him about?

MR. MENEFEE: Your Honor, that in fact -

THE COURT: There's testimony that these figures indicate a certain thing. Now, that's what you're trying to get to, isn't it?

MR. MENEFEE: Yes, sir. Yes, sir, these figures indicate that blacks in fact turned out quite well for Mr. Dedmond.

THE COURT: Well, you brought that out. Now has he questioned that in any way?

MR. MENEFEE: Well, I'm trying to understand. He said that -

THE COURT: Oh, I see, yes.

MR. MENEFEE: As I understood what he said relating to Mr. Dedmond's statement that Mr. Dedmond was complaining, [1562] he didn't understand exactly what Mr. Dedmond meant.

THE COURT: You're talking about the statement that he says Mr. Dedmond told him they didn't support him.

MR. MENEFEE: Yes, sir, I'm trying to understand his interpretation of it.

THE COURT: Perhaps you should have been asking Mr. Dedmond about it. This was not his statement. It was Mr. Dedmond's statement. Have you made any statements about how well the blacks turned out to support you or Mr. Dedmond, Mr. Kenney? A. No, sir, I haven't.

THE COURT: I didn't recall any either.

Q. What's your understanding of Mr. Dedmond's statement?

THE COURT: His statement speaks for itself. He's already said, "I don't know whether it means they didn't turn out or didn't support him when they turned out." I remember Mr. Kenney's statement. I think the matter you're going into now is more properly addressed to Mr. Dedmond, not Mr. Kenney.

Q. Does that statement have any meaning to you?

THE COURT: Don't bother to answer. He said it could have gone two ways, Counselor. I recall it, if you don't. You've pursued this far enough.

[1563] Q. Mr. Kenney, about how much money did you spend in your campaign in 1970? You said you ran a media campaign. A. I think it was around ten or twelve thousand dollars.

Q. And in 1974 approximately A. Probably about fourteen.

Q. Okay, sir, where did you raise most of those funds?  
A. Knocking on doors.

Q. Can you give us a rough breakdown as to how much you raised in the black community as opposed to the white? A. No, sir, I can't. I'm sorry.

Q. And soliciting votes in the black community, you said you contacted churches? A. Yes.

Q. Are black churches a leading institution or some of the primary institutions you solicited for campaigns in the black community? A. They were some of the leading institutions.

Q. What other institutions in the black community? you said you contacted churches? A. Yes.

Q. Are black churches a leading institution or some of the primary institutions you solicited for campaigns in the black community? A. They were some of the leading institutions.

Q. What other institutions in the black community?  
A. I was asked to appear at Abe's 506 Club.

Q. What is Abe's 506 Club? [1564] A. It's a night club.

Q. It's not a social, not a fraternity as such, is it?  
A. It's not a closed club. It's open to the public.

Q. Okay, sir. Any others? A. No organized institutions.

Q. Okay, sir. Mr. Kenney, would you agree with me as to this bus system that there are many functions served by a mass transit system such as that including energy conservation, the economy of the area, and that it is not solely for the benefit of the riders themselves? A. I would agree to the extent that it is energy-conserving if we can get people that are riding in Ford cars to ride the bus. If they'll leave the automobile. We haven't found as a practical matter that it happens. It sounds great in theory but it hasn't worked for us.

Q. And consumers are able to get to the shopping centers? A. Yes.

Q. Who otherwise are not, and it stimulates business?  
A. Yes.

[1565] Q. Mr. Kenney, this is plaintiffs' exhibit number 66. It's I think, actually supplied by your office. It's a list of the various boards and committees which you and the other commissioners make appointments to. The first two sheets are a summary giving the name of the committee



with a racial breakdown of the various members. On the second sheet there is a total which indicates three hundred ninety-five whites have been appointed to these committees and twenty-three blacks. We've counted thirty-nine separate committees. You said one of the, you said you were glad to appoint any citizens that came forward. Do you have any idea why more blacks don't come forward? Are they not interested in government? A. I couldn't tell you.

Q. Do you think they view your office as open and accessible? A. Yes, I do.

Q. Then why don't they come forward if they view it that way? A. You tell me.

Q. I was hoping maybe you could tell me.

THE COURT: He said he didn't know. Let's proceed, Counselor.

Q. Do you know of qualified blacks that would be willing to serve? [1566] A. Yes, Sir, I do.

[1566] Q. Are they serving? A. Many of them.

Q. Twenty-three? Mr. Kenney, on this community development block grant funds did you actively participate in formulating the request for CD funds? A. Yes, sir.

Q. And is it not a present assessment of needs of low income neighborhoods? A. Yes, it is.

Q. This is the 1977 community, let me see, I'll identify the exhibit for the Court. It's plaintiffs' exhibit number 78. It's the community development application from the county, 1977, and going into what's designated as page two of thirty-eight pages lists the five areas of need. I

would call, there's three on the first page. Going on the second page there are two more areas. In particular the fifth area, I call your attention to it. It denotes that the area of Cantonment and Century have an urgent need for community facilities, particularly sanitary sewage facilities, and points out serious health problems in these areas, et cetera, goes into housing demands. Do those areas have substantial black populations? A. Yes.

[1567] Q. So when this was filed as a request for funds it was the assessment of you and the others who filed this that these areas were in serious need as compared to other areas in the county, is that correct?

MR. LOTT: Your Honor, within the stipulation the plaintiffs have conceded they don't contest our responsiveness on the issue of water or sewerage.

THE COURT: Isn't that correct, Counselor?

MR. MENEFE: Judge, I'm talking about the CD funds.

THE COURT: You're talking about CD funds but still getting into responsiveness on water and so forth, aren't you? It's covered under the stipulation regardless of where the funds came from. You weren't contesting unresponsiveness in that area.

MR. MENEFE: Okay, Your Honor. Yes, Your Honor, that's certainly correct. This also, I just read community recreational facilities.

THE COURT: Let's proceed on. We could take a lot of time getting into things and I think you're getting into a stipulated area.

Q. So that was the present assessment as to the needs of the community, the particular needs, is that correct?  
A. Yes.

[1568] Q. I think that's about it, Mr. Kenney, except when you ran in 1970 was Mr. Davis the incumbent?

A. Yes, sir, he was.

THE COURT: Mr. Kenney, let me ask you something. You said you believed a black man could get elected in this county. We have about two-thirds white, one-third black. On the reverse side of that token -

MR. LOTT: Your Honor, the percentage is about 19 percent black in the county.

THE COURT: Only 19 percent in the county?

MR. LOTT: Yes, sir. The one-third, two-thirds, is in the city.

THE COURT: Is that voter registration?

MR. CARR: The registered electorate in the county is about 16 or 17 percent.

THE COURT: Yet you still believe that with that proportion between the registered white and black, a black could be elected? A. Yes, sir, I do.

THE COURT: On the reverse side of that coin, if you have an area divided in this county where you had, say divided in an area where the reverse were true and in that particular district the blacks were some 75 or 80 percent [1569] and you were running in a district, could a white man be elected? A. If he was the right man I think he could, Your Honor.

THE COURT: You think he could if he was the right man? A. Yes, sir.

THE COURT: You don't believe there's any polarized voting by race in this county? A. I would hope there isn't.

THE COURT: But you must believe there is, of course, to make that averment. A. To some degree there is.

THE COURT: Anything else with Mr. Kenney

MR. MENEFEE: No, sir.

THE COURT: Any redirect?

MR. Lott: No, Your Honor.

THE COURT: Mr. Kenney, again as a commissioner you may step down.

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## TESTIMONY OF A.J. BOLAND

[1763 A] A.J. Boland,

called as a witness by the defendants, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. CATON:

Q. Your Honor, this is Mr. A. J. Boland. He's currently the chairman of the Democratic Executive Committee for Escambia County. He is a principal in the local system, has been in the local system for how long, Mr. Boland? A. In Escambia County since 1953.

Q. Is that correct about the other information I gave about your background? A. Yes, I am the chairman of the Escambia County Executive Committee and I am the principal of Oakcrest Elementary School.

Q. How long have you been a member of the Executive Committee and how long have you been chairman? A. I've been a member of the committee, I believe, since about 1972.

Q. And how long have you been chairman? A. Since, that would have been December, 1974.

Q. December of '74? A. Right. I was elected chairman. I was elected to the committee in March of '74 during the [1764] presidential primary but we didn't have the reorganization of the committee till December of '74 and I was elected chairman at that time and I was reelected again in 1976.

Q. Could you describe to us briefly what the Democratic Executive Committee is and how it operates?

A. Well, the committee is composed of precinct people,

men and women who are elected from each precinct in the county during presidential primaries. After their election there's an organizational committee and they elect -

Q. Elected by whom? A. Oh, the committee people are elected by the Democratic voters in each precinct, the registered Democratic voters in each precinct.

Q. Yes, sir. Go ahead. A. All right, after the primary election where these people are elected in the precinct then we have an organizational meeting and we elect the officers of the committee to serve for the four-year period. The nine officers that we have are the chairman, the vice-chairman, secretary-treasurer. We have, at that time we elected an audit committee composed of three members, one of whom is chairman. Then we elected a state committeeman and state [1765] committeewoman.

Q. So there are nine officers. Could you tell us who the current officers are? A. All right, I'm the chairman. Dorothy Devalt is the vice-chairman.

Q. Could you tell us the race of each person as you go along? A. All right, I'm white, of course, and Dr. Devalt is black. She's the vice-chairman. Betty Park is secretary. She's a white person. John Reed is the treasurer. He's a black person. Beverly Mills is chairman of the audit committee. She's white. Cleveland McWilliams is a member of the audit committee. He's black. Bill Lamar is a member of the audit committee. He's white. William Marshall is black and he is our state committeeman and he's also the state treasurer.

Q. He holds a state office as well as a local office? A. Yes, the state committee has three officers; a chairman, a vice-chairman and a treasurer.

THE COURT: You don't need to bother going into

that. That is uncontested on the record before us. Go ahead. A. Olivia Jones is the last member and she's white.

[1766] Q. And what's the approximate total membership of the executive committee? A. A Hundred sixty-five.

Q. And of those do you know how many are white and how many are black? A. Yes, there are thirty-three black. I have a list of their names here if you would like that. Thirty-three black.

Q. Yes, sir. A. And that's a percentage, I believe, of approximately 20 percent, and in the Democratic Party in the county the overall registration is, the black is about 15 percent of the total Democratic registration and the membership on our committee, though, is 20 percent, and then of course the number of officers who are black on our committee is four out of nine or approximately 45 percent.

Q. I see. Could you give us a little more detail as to the function of the committee, what it actually does, what the purpose of it is? A. Well, the purpose of the committee is to support the Democratic Party and its nominees and to do anything that's proper and fitting according to custom and law and party rules in behalf of the Democratic Party. We have political rallies at election years during primaries. [1767] We try to assume a role of neutrality in the Democratic Primaries because we have our own people running against each other and that's in the family.

Q. Yes, sir. A. So we assume a role of neutrality during the primaries. After the primaries are over, though, and we have Democrats run against Republicans, we support our nominees. In the primaries we have political

rallies. We have TV rallies in which we give our candidates exposure to the public so that they present their cases.

THE COURT: You've given enough detail. Go ahead, Mr. Caton.

Q. Mr. Boland, you say the committee supports the Democratic candidate in the runoff. In the primary you try to take a neutral position?

MR. BLACKSHER: No, sir, he didn't say in the runoff. He said in the general election, may it please the Court.

THE COURT: He said in the general election.

MR. CATON: Excuse me, general election.

THE COURT: I think his position is clear and it's clear from other evidence. I thought it was even stipulated the Democratic Party takes no position in the Democratic Primaries but supports its candidate in the general election. Isn't that what you're saying to us? [1768] A. Yes, sir. Now, there are two primaries oftentimes.

THE COURT: And you take no position in either primary? A. In either one of those.

THE COURT: Go ahead, Mr. Caton.

Q. In supporting the candidate in the general election does it make any difference as to the race of that candidate, whether or not the committee supports him?

A. No, sir, no difference whatever. We don't ask them whether they're black or white or man or woman or what their religion is. If it's a Democratic nominee then we treat them equally.

Q. Do you recall the election in 1974 when Mr. Jenkins, a black man, ran against Mr. Leeper in the runoff election? A. This was before I -



Q. Mr. Leeper, I believe, was a Republican, was he not? A. Right, this was before I became chairman. I became chairman in December of '74 and at that time the elections had already been held. I do recall the election, though, yes.

Q. Okay, do you know if the Democratic Committee [1769] supported Mr. Jenkins? A. To the best of my knowledge they did, yes. Now, I was not one of the elected officers at that time and I can not tell you to what extent but I voted for Mr. Leeper and I know that many others -

Q. Who did you vote for? A. Excuse me, I voted for Mr. Jenkins. I voted for Mr. Jenkins and I know many other Democrats who support him also.

Q. Yes, sir. Mr. Boland - A. Could I add this?

Q. Yes, sir. A. I didn't really support Mr. Jenkins solely because he was a party nominee. Now, he's a college professor and I knew some of my students had gone to school out there who gave him an excellent reputation and they said he's a good teacher and he's fair to his students and there were other factors to be considered also, but I did support him in that election, yes, sir.

Q. Could you tell us briefly, Mr. Boland, whether there are any either legal or practical restrictions on any black person or persons of races other than white in the access to the Democratic Executive Committee? [1770] A. No, sir. None whatever. We cooperate with Joe Oldmixon, the Supervisor of Elections, in getting new people to register, and of course we're not the only ones. The League of Women Voters, other groups do this also, and we try to get as many people to register or to reregister if they've been dropped. So the door is open. Anyone can register. Secondly, once they've been registered, well, we

have get-out-the vote campaigns and that's for all the precincts, for all groups and all races to get out the vote. And -

THE COURT: You've answered the question, I think.

Q. All right.

Q. How do you become a member? What do you have to do in order, is there any qualification other than to be a Democrat or what?

Q. To be a member of the Democratic Committee?

Q. Yes, sir. A. There are two ways you can become a member. One you can go down to the Supervisor of Elections' office during election time and qualify in your precinct and run like anyone else. Now, if no one runs and there's a vacancy then the committee by a majority vote can fill vacancies. So when we have meetings almost every member who knows of a person in the precinct where we have a [1771] vacancy can recommend that person and by majority vote he could be elected to membership in the committee. There are no restrictions. Now, well, there is one restriction and that's in reference to sex. We can only have one committeeman and one committeewoman from each precinct except precincts where there are a thousand or more registered Democrats and in that case we can have two men or two women, but that has nothing to do with race.

Q. I see. How about party headquarters? How about the access of black citizens to party headquarters? How does that operate? A. During the general election of 1976 we did open party headquarters down at 810 North Pace Boulevard and during the course of the presidential campaign we had three employees, clerk type people, working in the office, making telephone calls and sometimes

going out to the precincts and carrying groups of volunteers to do precinct work, distribute literature and things like that. There were three people employed in there. Two of them were white, one was a black. The black person was Esther Williams, a young school teacher.

THE COURT: You've given us a lot of background but he wants to know whether there was access of blacks.

A. Yes, sir, definitely.

[1772] THE COURT: All right, sir, I think you've answered the question.

Q. Have there been situations, who is physically at party headquarters during an election, during a runoff election, say the last one? A. Well -

Q. General election, excuse me. A. During '76 when we had the election, I refer to '76 because we did not have, on nonelection years, '77, we do not have an open headquarters and we don't have one as of yet this year, but in '76 the three people who worked there were on a staggered schedule. Then we had many volunteers who come in and out and then the officers of the committee go in and any member of the committee can go in there. The candidates could come in and out. The candidates have, they can put up card tables and put their literature on the table.

THE COURT: Mr. Caton, you don't need all this background information.

MR. CATON: Your Honor, not all; just I think this is my last question and it will be pretty brief.

THE COURT: All right, sir.

Q. Tell us about the tables at the party headquarters.

A. Each candidate could have a card table with [1773] his literature on it and he could use the telephones

in to the office. He could use whatever voter lists we had there. Now, all of the candidates, of our Democratic candidates, had access to this.

Q. This includes the black candidates as well as white candidates? A. Yes.

Q. After the primary is over and it's time for the general election is there still activity at party headquarters?

A. Well, this has been the most of our activity then. We're low key during the primaries and the party headquarters really has a more sustained drive to get Democrats to vote and vote Democratic in the general election than we do in the primary. We're low key during the primary.

Q. In the last election when school board members, say, were being elected, were there black citizens as well as white citizens active in the general election at Democratic Headquarters? A. Oh, yes, very much so.

Q. Did you see them there personally? A. Yes, sir. Yes, sir, many of them.

Q. Were there any black candidates in that general election or had they lost in the primary? [1774] A. Dr. Spence was a candidate during that time and Mr. Jenkins was a candidate.

Q. We're talking about '76? A. Yes.

Q. Yes. A. They were candidates.

Q. Did they lose in the first primary or were they not successful? A. They lost in the second primary.

Q. So they were not in the runoff.

Q. The activity where the black citizens were there as

well as the white was in the runoff elections that you're referring to as well as the primaries? A. Yes.

MR. CATON: That's all.

THE COURT: Any cross examination? Any cross examination, gentlemen?

MR. BLACKSHER: Yes, Your Honor. We're fighting over who's going to get it.

THE COURT: Beg pardon?

### CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Boland, are there any national party requirements on participation of minorities on the local [1775] committee? A. The national party adopted an affirmative action plan and it was subsequently adopted by the state and we participate in this too and in fact this list of thirty-three people here is our affirmative action people who were recommended to participate from Escambia County.

THE COURT: Mr. Boland, we'll do better if you answer questions specifically. You're full of your subject and have a lot of background but we'll get along, he'll bring out what we need to know. You wanted to know if they had some affirmative action program?

MR. BLACKSHER: Yes, sir.

THE COURT: He's now given you some details. Go ahead, Mr. Blacksher. You want to ask him something else about it? A. Specifically what is your question then?

Q. I think you answered it. I asked if there was a national requirement.

THE COURT: I think he's answered and given you more detail than you've really asked for. I was just suggesting some of the questions you can answer yes or no. We'll see how it goes. Go ahead, Mr. Blacksher.

Q. Mr. Boland, are you satisfied with the success the local Democratic Party has had in promoting the [1776] candidacy of its black candidates? A. Well in '76 we weren't promoting any candidates in the primaries and blacks did not make it to the general election so we had no opportunity there to promote them in the general election. But they, I don't know how I can answer your question on that. I cannot answer for previous administrations or past boards of the committee but in '76 the blacks had equal opportunity and equal access -

THE COURT: Mr. Boland, you've answered the question the best you can. You have no statement with respect to that question is what it amounts to. Anything else with this witness?

MR. BLACKSHER: No, except to note there was no testimony by this witness concerning the city case.

MR. CATON: I'm conducting this examination on behalf of the school board.

MR. BLACKSHER: I think that illustrates how we're all in this together, Judge.

THE COURT: You can make that in argument to me later on, if you wish to. I don't know what you want. Is this witness excused from further attendance?

MR. CATON: Yes, Your Honor. We would like to call John Broxson.

THE COURT: Mr. Boland, thank you for being here.  
[1777] You're excused from further attendance.  
A. Thank you, Your Honor.

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## TESTIMONY OF LAWRENCE GREEN

[1991] LAWRENCE GREEN,

Called as a witness by the defendants, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. FLEMING:

Q. Your Honor, the witness is Mr. Lawrence Green.

THE COURT: Has he been sworn here?

MR. FLEMING: Yes, he was, Your Honor.

[1992] THE COURT: All right, proceed.

Q. Mr. Green, I understand, is sixty-four years old. He's a black citizen of Escambia County. His address is 8720 Hinson Street in the Ensley area of Escambia County. Mr. Green is the precinct committee chairman for voting precinct number 53. Is that correct, Mr. Green?

A. Yes, sir, it's right.

Q. Mr. Green, will you explain to the Court -

THE COURT: When you say voting precinct chairman, you mean the Democratic Precinct Chairman?

A. Yes, sir.

THE COURT: That's what we're talking about, Mr. Green? A. Yes, sir.

THE COURT: All right, sir. Go ahead.

Q. Thank you for correcting me, Your Honor. Will you explain to the Court what you do as precinct chairman, what the official duties are and how you perform those duties, please. A. My duty is to see, get as many people registered as I can. And on election day my duty is



to make sure that all elderly and people that don't have automobiles and everything get to the polls.

Q. How do you go about doing that, Mr. Green?  
[1993] A. Every way that we can by people that are running, and the Democratic Party this last time give a hundred fifty dollars to make sure that we did get the people out in the Ensley area. If I may say so, as you know, Ensley formerly was Fig City and has become the largest, practically, voting area that we've got now in Escambia County.

Q. Okay, the racial makeup of that precinct, is it mixed black and white? A. It is.

Q. How long have you been the precinct committeeman, Mr. Green? A. This is my second term. My term expires 1980.

Q. And your first term began when, so we'll have the time frame? A. It was two years at the time, four years ago.

Q. Mr. Green, have you been involved in politics in Escambia County for a period of time prior to that?  
A. Oh, yes, sir. I really go way back.

Q. Have you been active in the campaign efforts of particular candidates for office and, if so, which candidates and what is your involvement in their campaigns?  
[1994] A. County commission, sheriff, state attorney, judges.

Q. How far back does your involvement in these campaigns go? A. Oh, way before Mr. Westmark's time, the late Mr. Westmark.

Q. That would have been prior to - A. And T. C. McCoy, Mr. Cobb, Bill Powell.

THE COURT: How many years are we talking about approximately, Mr. Green? A. Well, ever since that we've -

THE COURT: I mean how many years does this go back approximately? A. Oh, this goes back thirty years to me.

THE COURT: All right, sir, go ahead.

Q. How, if you would, describe some of the candidates that you've been principally involved with over that period of time, and by no means, I'm not asking you to list them all but explain how you've been involved in some of those campaigns. A. First let me say the precinct committeeman, I have so many people running for office come by and talk with me. As you know, I was an elected official just like everybody else and all I can express to any candidate when he comes out is this. He says, "Can I get [1994] your support?" If I agree to vote for him, then when others come and ask me, "Who are you voting for," all I can tell them is who I'm voting for. I can't tell them they vote for this man or that man. I tell them who I'm voting for and if they think he's got a good enough platform and have sold himself on them I guess they vote for him too.

Q. Do large numbers of voters come to you and seek your advice due to your having conversed with member of political candidates? A. That's why I'm late. I was in Cantonment on that same subject at an office today. That's where I was.

Q. You were talking with voters about candidates? A. They was talking, and if you want to know who they were talking about, they was talking about the governor's race, and I don't know them, I can't tell them who.

Q. Give the Court, if you would, an indication of how many candidates there are who come to see you during the election campaigns, just so the Judge will be aware of the extent of your involvement in local political activity.

A. Well, everyone running. I would say everybody running in Escambia County goes by [1996] Lawrence Green's house if they're running. I believe I can say that. There's nobody that I could say don't go by.

Q. And do they come by actively seeking your support? A. They come by and they, the biggest of the candidates, when they come by they want to know where the voters are at in Ensley, where they live, so that they can go and see them and shake hands with them personally themselves. They say, "You have the list of them. Give them to me." Some of them bring their secretary. They sit under my tree out there and type out the names of all the lists of voters in 28, 53, 101, 69, 37 and 112 and 111. They check them out and they goes around to check them and see them and talk to them their personal self. They say, "I want to know where they live so I can go."

Q. Now, are these candidates who come to see you, are they mostly black candidates, mostly white candidates? A. All of them, black and white.

Q. Virtually every one of them? A. Everyone of them. I can name you every one. Every one I named previously have been to sit and talk with me.

Q. Well, let's talk about the campaigns, some of [1997] the recent candidates for office. I would appreciate it, if you would prefer it that I do it another way, I would appreciate it if you discuss them as they come to mind, those most vividly to you, so we won't waste a lot of time with some you don't have a recollection with. Explain to the Court some of the recent campaigns as you've experienced them, how the blacks and how the whites have

made efforts to solicit your support and what you've done for them. A. For instance, say Mr. Lancaster. I don't think he'd mind me using that. This last election he moved his campaign in Ensley and he moved it out there because he wanted to be where the voters were together and go see them. And he called people. He visited them out there, both black and white. He didn't just visit me alone. He went to everybody's house he could call and he went to see them. And he got the votes.

Q. What about Commissioner Kelson, Kenneth Kelson? A. Mr. Kelson did the same thing.

Q. What about Commissioner - A. Mr. Beck, same thing.

Q. What about Commissioner Jack Kenney? A. He didn't visit Ensley too well.

Q. Jack Kenney hasn't come to visit? [1998]  
A. No, he did not.

Q. How about Commissioner Charles Deese? A. He lives there, been there all his days. He was born and raised there in Fig City so he's all over there.

Q. How about the members of the school board? Do the members of the school board come to you and seek your support and seek the votes of the people in your community as well? A. On the school board system, this is my twenty-ninth year of my wife driving a school bus and the school board has a policy they don't care too much about the employees being too much in politics and that's my wife and I try to stay just as level on that as I can because I wouldn't want to see a school board member be elected and say, "Your husband ran around here and fought me." So I stay as level with them. I helped Mr. Stokes, if you might want to know about that. He'll tell you the same thing.

Q. Now - A. He's the superintendent of public instruction now.

Q. So far we've mentioned white candidates for office and those who have successfully been elected to office. Do these candidates, white candidates for office, [1999] repeatedly come around to your house or do you only see them at election time? Is their politicking continuous or is it just election day? A. Till 7:00 o'clock election night you still see them out working. They never gives up. Your arm gets tired of shaking hands.

Q. How about between elections? A. Same thing.

Q. Now I would like you, if you would, please, Mr. Green, to explain your experience with respect to the amount of such political activity from black candidates for office. For instance, Mr. Elmer Jenkins. Has Mr. Jenkins come to see you in the same fashion? A. Mr. Jenkins came out and visited me very often. The last three weeks he didn't, and my boys, one of them, the one in business, was handling all of Mr. Jenkins' transportation, as much as he could, as much as he was able in this last election.

Q. You say as much as he was able. What do you mean by that, sir? A. He went about five hundred gallons of gas for automobiles, I believe, you know, for transportation.

Q. And has Mr. Jenkins come around to keep up contracts between elections in the same manner that some of the other candidates you spoke about do? [2000] A. Mr. Jenkins did not do that in the last three weeks and he's sitting over there and I'm saying he did not visit Ensley. I don't think he did it because he didn't, hadn't checked the records to find out that Ensley was as strong a voting area as it was. Quite a few of the candidates hadn't

checked that with Mr. Oldmixon's office to find out those precincts are pretty heavily population of voters and maybe Mr. Jenkins during the time was think that he was better off, I reckon, in the city, which I don't know too much about city elections, and that's what come in.

Q. Are you suggesting Mr. Jenkins didn't make the effort he might have? A. To my opinion Mr. Jenkins slacked off in the last three weeks.

Q. And you're speaking of which campaign? Seventy-six? A. This last one, this time he ran with Mr. Bailey.

Q. Did you have the same experience with respect to his '74 campaign for school board? A. I don't think so because Mr. Jenkins was pretty well on Mr. Leeper that time.

Q. You're saying he ran a better campaign in '74 than he did in '76? [2001] A. No, I think he was better than Mr. Bailey, I feel that, countywide. I'm talking about countywide, Judge. He was countywide better on this last than he was previous according to my record.

Q. I'm about to go on to another subject matter, Mr. Green. Before I do I'll ask you, are there other races or other candidates for local office which you think are exemplary or good examples of the type of activity, the type of campaigning for political office that black or white candidates make in the committee precincts? A. You'd better come back and explain that a little more and let me see what you're talking about.

Q. What I'm getting at, I'm just trying to bring out the examples. A. I mean what you meant. You're saying between black candidates and white?

Q. I would like you to compare for us, if you would, the relative efforts of black candidates and white candidates for votes in your precinct and those precincts -

THE COURT: The relative ethics?

MR. FLEMING: Efforts.

THE COURT: Efforts. A. Well, you know yourself a lot of blacks don't just vote for blacks. They vote for the man that they think [2002] is most qualified. I think that's out, to say that all blacks are going to vote for blacks. They won't do that because they have people that they think about just like the white do.

Q. Do you not share the opinion of some that a black voter needs to have a black representative? A. They don't vote for blacks just because the black is running. There's a lot of people in Escambia County votes for the man they think is best qualified. That's who they vote for.

Q. Well, with respect to the qualifications, if what you say is true then those persons who have been elected to office might be the most qualified so I would like to get on to, without being argumentative I would like to get on to the next subject and ask you if you would describe your experience with respect to the responsiveness of the local white officials who've been elected to office after these campaigns and how responsive they are to the needs of the county's black citizens. Begin, if you would - A. I think I can answer that. At the present time I'll use the county commission on that. The county commission at the present that we have in office, they don't, not, I don't believe, to my opinion, look at a voter after the election because any taxpayer can call [2003] any one of the county commissioners and tell him, "I live in Bratt, the north end of the county, Bratt. I want you to come up here immediately. I want you to see somebody." And one of them is going. It doesn't make any difference about that.

Q. Have you had that experience? A. Sure, I've had that this past week.



Q. How about your neighbors? You may be a particularly influential person who can get results that somebody else can't get. Do you have similar experience with respect to your neighbors' ability to get service from county commissioners? A. If you're asking, we have a problem right now in Ensley on Stockdale Road and the neighbors are real upset. They continue to tell me they're not going to vote for Mr. Beck because they won't grade Stockdale. That is the street. The street is the thing, that the county can't get a drainage system. The highway patrol lives down there, has got a fish pond. Mr. Johnson says he's not going to run it on his and the other man is not going to run it on his so their hands are tied until they get it, and quite naturally, some of the blacks say the county commission is no good, but they have to have drainage. They have to have right-of-way. They've got two places right in my community, they can't grade the [2004] road through because some of the houses are sitting in the right-of-way. Thirdly, you have to give the county commission thirty-three feet off your property, thirty-three off the other, to get a route. A lot of our people, both white and black, say, "I ain't going to give the county no right-of-way, they're going to buy it." The State Road Department is the only ones going to buy a right-of-way and when they don't do that they don't get a road and the county commission is no good.

Q. I believe you have particular experience, particular knowledge in that regard of Airway Drive, which is in the vicinity of a neighborhood, It's in the same neighborhood in which you live and to which Mr. Sam Adams spoke about and which I understand Mr. Robert Jackson is a resident of that neighborhood. Will you explain. A. Mr. Robert Jackson lives one house off Airway Drive and it's paved. During the time when Airway Drive was paved the



blacks give a right-of-way from Johnson Avenue which goes north from Ensley school. It got down to the white settlement, just across on the end of the black settlement, and the white refused to give a right-of-way and the county commissioners stopped blacktopping right there. They did not do it until [2005] the whites signed the same things the black signed before they would pave it.

Q. Are you saying the black road got paved first?

A. It got paved first, Airway Drive.

Q. What about the, have you experienced that only the commissioner from your residency district has been helpful in getting things done in the north end and in the Ensley area or have you gotten help from other commissioners as well? A. Before, well, I'm going back a little bit so some of you will know about it. You're not my age. Before this was countywide as it is now District Five, I know in the time Mr. T.C. McCoy, a grader would break down and he didn't have money to fix it with.

Q. T. C. McCoy? Before you go on, T. C. McCoy was a county commissioner prior to the change to at-large?

A. Yes, District Five didn't get the funds to operate off as the other four districts and it has always been a trend that they just didn't get none. But since this has been like it is now and the county, everybody votes for county commissioner and does so, we have been beginning to get more roads from here to the north end of the county. We've not got them, we're still far behind, there are plenty of roads that are not paved, but we are [2006] getting better than we were since this has been beginning.

Q. Do you think it's the fault of the county commissioners that there are a number of unpaved roads?

A. Well, during the past, as I aforesaid, that the county

commissioners in Districts One, Two, Three and Four would not allot the money for District Five is the largest there is because it goes all the way to the Alabama line and extends straight across Olive Road and goes to the north end of the county. It's a large thing and the funds always was low.

Q. Now, sir, have you had similar experiences with respect to the responsiveness and the works of members of the school board? How have the school board members treated you in that regard, those that have been elected?

A. I haven't had no trouble with nobody in the school system. As I aforesaid, I have a wife with twenty-nine years and I didn't go into that too far because I didn't want some member of the school board being elected and turn around and say, "Well, your old man run around here and hurt me so I'm going to hurt you." I stayed away from that as much as I can. I helped Mr. Charlie Stokes and that's about as far as I went. I don't [2007] want to talk about the members of the school board. I would rather not.

Q. By not talking about them do you mean to suggest they haven't been responsive to the needs of your community? A. I haven't seen anything they've done wrong.

Q. You haven't seen what, sir? A. I haven't seen nothing so far they've done wrong.

Q. Okay, thank you. Now, I haven't asked you particularly about the city council because as I understand you haven't been involved with the politics of the City of Pensacola. A. No, sir, I do not bother with the city council. Anything north from Brent Lane to the Alabama line I'm willing to talk with you about but when you come on downtown I don't bother with that because I don't live in the city limits.

Q. Now, apart from the downtown area in the City of Pensacola, Mr. Green, I don't think this has been done before, will you explain to the Court where the principal areas in Escambia County are where black people live other than downtown. A. Right at the present time you're asking a question that I can't exactly answer because right in my [2008] neighborhood right now in these new subdivisions the blacks are buying and moving in all of them so they're wherever you go right now.

THE COURT: Are you in or outside of the city limits?

A. Out of the city limits.

THE COURT: Are you in or out? A. I'm out of the city limits.

THE COURT: You wanted to find out outside of the city limits where the blacks primarily live? Is that it?

MR. FLEMING: I was trying to locate where blacks primarily live but I can do it through my next witness, Your Honor. A. I will tell you, this question, that in my community where I live is a large black community but the white are moving in. They're buying and building houses right in our neighborhood so it's hard to say now where blacks live or who lives. You used to.

MR. MENELEE: We've got the census tracks.

THE COURT: You don't need to go into this. I think you have other testimony.

Q. I just have one more question, Mr. Green. Tell the Court, if you would, how far the Ensley area where you live is from downtown Pensacola. [2009] A. I live from the San Carlos Hotel nine miles and one-tenth.

Q. Nine and one-tenth miles from the San Carlos Hotel? A. I'm just south of the Nine Mile Road.

MR. FLEMING: Thank you very much, Mr. Green.

THE COURT: Cross examination of this witness?

MR. MENEFEE: Yes, sir, very brief.

### CROSS EXAMINATION

BY MR. MENEFEE:

Q. Mr. Green, what's your educational background, please, sir? A. I'm glad you asked that.

Q. Yes, sir, I'm glad I did. A. It came out, I was trying to check on that yesterday. That was being checked yesterday. I'll give you the history of my life.

Q. No, I don't want the history of your life.

THE COURT: Mr. Green, just tell us the extent of your educational background. A. I finished the tenth grade.

Q. Okay, sir. A. At the Snow Hill Institute, but I went all the way through the Air Force and I got every type of diploma you can name up to a B-52. I was a crew chief [2010] in Okinawa.

Q. Okay, sir. Now, let's see, Mr. Green, if I can go back over it, it's precinct 53? A. Yes, sir, precinct 53.

Q. All right, sir, and which candidates in 1976 for county commission did you work for? A. Mr. Lancaster.

Q. Mr. Lancaster? A. Uh-huh. I didn't work for him. I just told people I thought he was the best candidate in that election.

Q. I see, sir. Okay, vote returns reflect that Mr. Lancaster got four hundred eighteen votes and Mr. Barnes got three hundred twenty-six in that precinct. A. That's correct.

Q. Who else did you work for, please, sir? Mr. Beck, Mr. Armour? A. Mr. Beck.

Q. Okay, sir, Mr. Beck carried that precinct four hundred seven to three hundred seventeen. Who else did you work for? Mr. Deese, Albritton? A. Worked for Mr. Albritton and lost.

Q. Mr. Albritton lost that one two hundred ninety-three to four hundred fifty-eight. Now, you said that Mr. Jenkins slacked off in his campaign? [2011] A. I said that Mr. Jenkins slacked off in -

Q. Let's see how Mr. Jenkins did in your precinct. A. That's right, slacked off coming out to the house, which I asked him and I didn't see him in the last three weeks before election.

THE COURT: Well, do you think, did you testify, you didn't testify that that hurt him in that area, did you? Or did you? A. Yes, sir, the first time it did, Judge.

THE COURT: You said you think it hurt him in the area because he wasn't there during the three weeks? Is that what you said? A. That's exactly the way I feel about it.

THE COURT: I see. I didn't know. Go ahead.

Q. Mr. Jenkins got three hundred fifty-nine votes in that precinct. That's what the record shows. A. Let me see.

Q. He lost that precinct by about thirty-five votes. All

those elections were sort of split down the middle, weren't they? Let's go back. How many did you say he lost that?

THE COURT: If you need to get into this, and I don't know, but his testimony was that he ran worse the second time he ran in that area than he did the first time [2012] and he thinks it's because he didn't show up and work out in that area. How valuable or what relevance that particularly has I don't know.

MR. MENEFEE: I don't believe it's supported.

THE COURT: If you're going to get into it, let's get the results from the first time and second time, if we have to spend this time. I question why we are doing it.

Q. Well, I suppose I have some doubt too, Your Honor.

THE COURT: I tell you what, sir. I'll just foreclose it now. I'll just rule it out under the rule if it has any relevancy it's outweighed by practical considerations, and let's drop the subject and go on.

Q. Thank you, Judge. Let's see, Mr. Green, you were talking something about the paving conditions in your neighborhood, Ensley, and we've had testimony from Mr. Sam Adams and others about unpaved streets in your neighborhood. There's a fair number of unpaved streets in your neighborhood, is that correct, sir? A. The only street in Ensley that I aforesaid was Stockdale, in that area, that there was a big complaint about. At the present time they can't get a drainage system and that's been in the budget for two years and they can't get it through because they can't turn [2013] the water in anybody's yard without being sued.

Q. Let me ask you this question then, sir. Am I not correct that Hinson Street is paved past your property and to the edge of your daughter's property and then it stops and then is unpaved and then Ensley Street is paved on the other side of your property to the edge of your son's property and stops there and then is unpaved. A. That is one of the cases where they come down and stopped the county commissioners and there's property in between the two residences and why it's not gone any further, Mr. Jenkins knows himself, that's Mr. Montgomery's property and he says the county wasn't going through the property and when they got up there he stopped them with shotguns and that's why they stopped there.

THE COURT: Who stopped them with a shotgun?

A. The property owner.

Q. Have you had much problem getting blacks in your precinct to reidentify? Is that a problem? A. You mean to register?

Q. Yes, sir. A. I've been working on that all day. I have a list of them out there from Mr. Oldmixon's office showing how many were dropped from the list. I wish I'd brought it with me and let you see it.

[2014] THE COURT: He wants to know if you have a problem with it. A. No, sir, I don't have trouble.

Q. You mean it takes a lot of work? A. Yes, sir.

Q. You work at that a lot? A. I'll be glad when 1980 comes. I won't have this no more because it's voluntary work and it's tiresome. No, sir, I have no trouble getting them to register. I have slight trouble getting them to go to the polls and it's got so if you don't ride people to the polls these days they won't go.

Q. Well, did you understand I'm not saying Mr. Oldmixon caused any problems; I'm just asking how much -  
A. No, sir, he didn't. He's not caused any trouble.

Q. I'm not saying that. Are you telling me that it's easy to get people to go down there and reregister, reidentify?

A. Yes, sir. I'm getting them now every day.

Q. Okay, sir. A. Every day.

Q. You work at it every day? [2015] A. Yes, sir.

Q. Okay, sir. A. Yes, sir. But I aforesaid that on election day we have a lot of difficulty sometimes getting people to go to the polls and I believe there's men in here with me on that.

Q. Are your sons in the fill and dirt business?

A. Yes, I give them it. That was my business and I give it to my son after I was retired.

Q. Did you do any work for the county or school board? A. No, sir.

Q. Neither? A. No, sir. No.

Q. When were you first, when did you first try to get Hinson Street paved? A. Lord have mercy, ever since the late Mr. T. C. McCoy was in office.

Q. Early fifties? A. Thirty years ago.

Q. When did it finally get paved? A. Mr. Lancaster, Mr. Albritton and Mr. Kelson and Mr. Armour and them got together three years ago and paved it first down to my house and ran out of material and finally finished it to my daughter's house and later [2016] went in that area east and ran into Mrs. Mitchell and Mr. McCoy and them's property and said, "No, sir, you won't go any further."



That's how come Ensley Street runs into Airway Drive at Spencer and when it gets there Spencer takes over from Ensley and Ensley Street stops and we just can't, they won't let them go through.

Q. The answer is in the past two or three years?

A. Yes, sir.

MR. MENEFEE: Thank you, sir. A. All right, sir.

THE COURT: Any redirect with this witness?

MR. FLEMING: Nothing further, Your Honor.

THE COURT: Mr. Green, thank you for being here. You're excused from further attendance. A. Yes, sir. Sorry I was late.

\* \* \* \* \*

## TESTIMONY OF DR. MANNING J. DAUER \*

[3] DR. MANNING J. DAUER,  
called as a witness by the defendants, being first duly  
sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. CARR:

Q. May it please the Court, this is Dr. Manning J. Dauer, D-A-U-E-R. He is sixty-eight years old. He was born in North Carolina, attended the University of Florida, graduating with a bachelor's degree in history and political science in 1930. He got his master's from the University of Florida on the same subject in 1931. He finished his doctorate in history and political science at the University of Illinois in 1933. In 1931 to '32 he was a fellow, a teaching fellow, at the University of Illinois. He went to the University of Florida to become an instructor and professor and chairman of the department of political science, where he has been since 1933. He has been a Distinguished Service Professor at the University of Florida from 1972. He has been a visiting professor at a number of universities around the country, including New York University, the University of Alabama, the University of Massachusetts and Stetson University. In 1955 he was appointed by the Governor of Florida to the Citizens Committee on Constitutional Revision and its committee on reapportionment. He was in individual *amicus curiae* in a lawsuit styled [4] *Swann vs. Adams* involving reapportionment of the State of Florida in the mid nineteen-sixties. He has been director of a civics institute at the University of Florida, consultant to the Florida Constitutional Revision Commission in 1966, a consultant to the Executive Reorganizational Plan Committee of the Florida House of Representatives in 1968. He belongs to

\*Transcript pages 21-47 of Dr. Dauer's testimony were accidentally omitted in printing but are included in Volume V to this joint appendix at 1284-1304.

numerous professional associations including the American Political Science Association, of which he was a member of the council between 1953 and 1955 and vice-president of that association between 1965 and '66. He also belongs to the Southern Political Science Association, of which he was the secretary-treasurer and later president; the American Historical Association; president of the University of Florida Chapter of Phi Beta Kappa; managing editor of the *Journal of Politics*. He has written numerous articles, monographs and books on municipal and state government, reapportionment, and on at-large and multi-member districting and the impact of such districting on minorities. Your Honor, we offer Dr. Dauer as an expert in the field of political science and introduce his vita.

MR. STILL: No objection, Your Honor.

THE COURT: All right, sir. For the record you do have to ask him if what you said is true.

Q. Doctor, is what I've said true? [5] A. Yes.

Q. Dr. Dauer, have you been retained by all the defendants in these lawsuits, that is, the City of Pensacola, Escambia County, and the School Board of Escambia County? A. I have.

Q. When were you first approached by these defendants? A. In February of this year.

Q. And are you being paid your usual hourly fee for your consultation in this case? A. That is correct.

Q. Is your fee in any way contingent upon the outcome of this litigation? A. No.

Q. Dr. Dauer, would you tell us what the terms "dilution" and "white polarization" or "white block voting"

mean to you as a political scientist. A. Yes. Dilution of any group of voters depends on a total picture of what the political effects of elections are. Included in these total effects, I would say, is any group of the population excluded from registration or from the polls, either formally or informally. That would be very significant evidence because if they did not have access to the ballot then they obviously could not participate.

[6] Q. You're talking, Doctor, about formal or informal restrictions of any sort? A. That is right. In other words if there were legal restrictions, as was formerly the case in the south, or if there were any attempts to place the polls in inaccessible places or matters of that nature, that would be a primary factor. A second factor is, do candidates try to get the vote of a particular minority. For example, do they, candidates, campaign on issues which are of interest to that group and do they openly campaign. A third factor is whether or not if the candidates are elected and have indicated a program or platform that concerns a particular group, do they carry out their program. By program I mean, for example, such matters as specific items as in the case of a School Board, this would include not only the regular curriculum but also any matters of interest such as compensatory education, summer school programs, Head Start, possible nursery support, school lunches, free textbooks, and various items such as vocational education. The same thing would apply in the case of cities: Are services rendered uniformly throughout the community to all recipients; is street lighting in that way; is it placed more in one area and more in one segment of the population than another; are streets paved; is there garbage collection; are there recreational facilities; or is there adequate fire [7] protection. And then included in this area of services are matters of special interest such as

employment programs, federal grant programs, are those actively sought; CETA programs which might lead to further training and employment, would a governmental unit such as a city, school board or county commission concern itself with such items. Then there will also be the matter of appointments to office and whether or not minorities are appointed among the various employees, whether or not there are affirmative action programs. Affirmative action includes seeing to it that there is no discrimination because of race or class or sex or the like. Now, affirmative action programs do have to be weighed in part according to the availability of individuals in particular categories of jobs. That is, if none are available in a particular specialty such as accounting, why, it would not be expected that affirmative action could result in an exact equal distribution among men and women or white and black. It would have to - but in general there should be a proper consideration. After you get through these services a final factor is on whether or not there is election of candidates from a minority, whether or not women or a minority are able to compete. But that factor by itself is only a part of the total picture.

Q. So what you're saying, Doctor, then is that the most important things to you as a political scientist in [8] weighing whether dilution exists in a given context is the actual campaign dynamics of a situation and the actual performance of the government.

MR. STILL: Objection, Your Honor, that is leading the witness.

THE COURT: Objection is sustained.

Q. All right, sir. Doctor, can you tell us how you measure the degree of the white polarization that you have said is the key to, or the sine qua non of dilution? Can you

make a determination of that solely upon any statistical measure?

THE COURT: I don't remember his testifying about polarization. Maybe I missed his testimony. Did you give us any thoughts or views about polarization of voting in connection with your testimony so far, Doctor? A. No.

THE COURT: That's what I thought, sir.

Q. I'm sorry, Doctor. I thought I understood you at the outset to address that question and its relationship to dilution.

THE COURT: Go ahead and get into your subject with him.

Q. Thank you, Your Honor. Doctor, what is the relationship between the term "dilution" and the term "white polarization" or "white bloc voting" as it's used? A. All right. This would relate in this manner, [9] that if the white vote in a black-white contest proceeds to block behind candidates who are opposed to a minority, for example if it were possible for the candidate to ignore a minority and then still get the bulk of the white vote, that would indicate white polarization. That would indicate that the appeal to prejudice, the appeal to race, transcended anything else. And then if the candidate did not campaign in the black community, was able to ignore the black community, was able to show that the black community did not have to have any of its needs considered, why, then if that candidate on such a platform received an overwhelming number of white votes and the white vote is in a majority, that would indicate the effective polarization. That would mean that the white vote was susceptible to a racist appeal. Thereupon you can measure that statistically if the white vote ignores the candidates who might favor the black community. And or, and if the

white vote blocks behind candidates that favor the white community only in platform and in the like, then I would say that that constituted polarization and was serious evidence of dilution.

Q. So can you make a determination -

THE COURT: Mr. Carr, just a moment, please, sir. Doctor, give me that last one, one more time, will you? I was trying to make notes. You said it can be measured statistically if the white vote ignores the candidates [10] favoring minorities, I got that much out of it, and would you give me the rest of it, sir. A. All right. If the white vote is following candidates who appeal on the basis of race and who ignore the needs of the minority or if in the platform there is specific appeal against the minority or if there is specific appeal only to the white voter and then if a percent of the white vote goes for that, overwhelmingly for that candidate on that type of platform, that would be evidence of severe polarization.

THE COURT: All right, sir. Go ahead, Mr. Carr.

Q. So, Doctor, can you measure the degree of this white polarization solely upon any statistical measure such as a regression analysis? A. A regression analysis is a procedure to find out correlation between various aspects of the appeal. For instance if I am making up a regression analysis I would get the precincts which have a heavy black vote and I would get the percentage of blacks and then I understand that there are some hundred-fourteen or were a hundred-fourteen precincts in Escambia County. I would scale those precincts according to the percent of vote that, excuse me, the percent of registration first. Then I would take the black-white registration in precinct after precinct and scale them from those that were high registra-

tion black to zero percent [11] black or very low percent black. That would, then I would enter the actual vote for particular candidates and if the candidate, for example, had ignored the black demands and got a heavy vote in the white precincts, that would be an important factor in a statistical measure. Now, specifically in stepwise regression, which is one procedure that you can use in this, the result would be that that would be one factor; that is, the relationship between the platform on the one hand and the percent of vote in black-white registration precincts. Now, also in regression analysis you have to consider other factors. For example, you may need to consider the men and women and then you do another correlation where you put the men and women in a particular precinct. Or you take from the census tracts the question of income. That would be a third type of correlation that you could work out. Then you see which of these is the most indicative of the way individuals vote. Now, this is a, in other words in a particular race if the candidate be white and the candidate has opposed the blacks and that candidate gets a heavy vote in the white precincts, that is evidence of vote polarization in that particular race. And, now, on the other hand, if the vote only blocks in the black precincts and doesn't block in the white precincts significantly, then it is not evidence of such polarization.

THE COURT: Why isn't it, sir? It would mean that [12] in the blocs with their votes they're voting for their candidate. A. That's right.

THE COURT: It would be polarization as far as they're concerned. A. It would be polarization on the part of the black vote but not polarization on the part of the white vote.

THE COURT: I see.



Q. Dr. Dauer, let me ask you this question. Could you have under a stepwise regression technique a high correlation of coefficient, coefficient of correlation, and still have very little blocking of the white vote? Could you have a black candidate who wins the white precincts and still come up with a high coefficient of correlation? A. You could in this type of situation in that this is a limitation on the, on the use of this stepwise regression. For instance if the black candidate gets 90 percent in the black precincts but still were to get 55 percent in the white precincts, then in the case of a majority of white voters, why, the candidate is doing very well. The black voters are being polarized; the white voters are not. This would still show as factor number one on the stepwise regression but it would not be evidence of vote dilution because the candidate either who is black or who favored the [13] black has been elected.

Q. Okay, sir. So, Doctor, you then don't think that you can determine vote polarization solely by regression analysis? A. No.

Q. What then do you look to to ascertain that? A. I would look at who gets - I think it depends on the total political picture, and by the total political picture I come back to what I defined as vote dilution and that is if all segments of the population can register and vote, if they are all, if the candidates campaign on issues and campaign among the minority, if the candidates are elected who favor programs for the minority, and if the candidates then carry that out, then the statistical analysis is far overcome by the total political result in the community and in that particular area as with a school board or county commission or city commission.

Q. Thank you, Doctor. Doctor, as you use the term "polarization" can you characterize a white electorate as

genuinely polarized, would it elect even a black candidate who had previously been appointed to his office and thus had an incumbency advantage? Would there be a genuine polarization in that situation? A. The candidate appointed is what?

Q. Is black. [14] A. If the candidate appointed is black he has the advantage of incumbency but the advantage of incumbency would be far outweighed by white versus black if the electorate were polarized.

Q. So an electorate that is genuinely polarized would not behave that way, would not elect the black in that particular case? A. That is correct.

THE COURT: That is in that particular case. Obviously if he's elected and running from minority status, obviously there was no polarized white vote against him. A. That's correct.

THE COURT: That would be true only in the particular election where that resulted. You would have to look to other races for other factors? A. Yes, in other races you would have to, if white versus black, and nobody is an incumbent, you still have to look at the program, at the platforms of the candidates. But the ultimate result is not, the ultimate definition of polarization in my judgment is not the election of a particular candidate because candidates have varying degrees of popularity and it is also true that when a minority comes into the political process its candidates may not be as well known as some others initially but in the long run then there still is potential for their election.

[15] THE COURT: I see. A. So that - but I think it still turns not just on the election of a candidate of a minority but the total result of the political process in

terms of the delivery of services that are of interest to the minority in the electorate, in the political process.

THE COURT: All right, sir.

Q. So, Doctor, may a black minority in fact have more real raw political power, if you will, in an at-large system than in a single-member system? A. The answer is that if it can - I have made studies of legislative delegations which I think are applicable to this situation. I did one on multi-member districts in Dade County and I weighed, this was legislative and not city or county commission, but it has this applicability, that candidates campaigned in the black community where there was at-large election. Then I took the votes cast in the Florida Legislature and found that the total number of votes in the Dade County delegation went fairly heavily when they were voting on measures in the Legislature such as social welfare legislation or the like according to the platform that they had campaigned on in the black community. Consequently, because the black community had impact on, in this case, some sixteen races, it had more impact in my judgment because it was having an impact on [16] sixteen votes in the Florida State Legislature. It was having more impact than if the black, if they were in single-member districts, and in single-member districts then at best there might have been two representatives from the black area and the other fourteen would not have been represented as much by the vote that was cast in the black community. So I don't regard multi-member districts as discriminating against the blacks. I think in fact they can have more impact because they vote for, in a number of races, and if we turn to a city or county commission the result could be that if you elect one black on the commission because that individual is in a, from a district where there are a majority of black voters, but the other four in-

dividuals only campaign in the white community, then that guarantees nothing about the delivery of services and nothing about the measures which the black community may need for its support. So that in such case you merely could transfer polarization from the specific district into the commission and there would be no gain. Whereas if you let the black individuals vote in the five races as for county or city commission, then what you wind up with is if the candidates, black or white, who are elected, campaign in the black community, and if they, and in many instances that conceivably could be the swing vote that would determine the election, why, then there is a larger impact of the minority on the total results of [17] delivery of services than is the case if you have single-member districts.

Q. Doctor what other advantages are there to at-large systems as opposed to single-member systems? A. The other advantage of at-large systems is that there is less ward politics. There is, that is, we have had a number of studies of city commissions, of county commissions, and instead of considering the total needs of the community you might, you could often wind up, for example, distributing street lights per ward and then letting the person elected from that ward or district determine where they be placed. And this is on a basis of favoritism and is not a good system

Q. Doctor, is the danger of ward politics significantly reduced by the simple fact that you might have a city manager or county manager? A. It is reduced somewhat but it's no guarantee against ward politics. It's reduced somewhat because city manager charters typically have a provision preventing the individual member of a commission requesting specific policies of the city or county manager and also requesting that the city or county

manager make appointments. However, if they log roll among themselves for matters they could then get around that by having such a vote in the commission as would tie the hands of the city manager, city or county [18] manager.

Q. All right, Doctor, in an urbanized area is single-member districting necessarily going to reduce the costs of campaigning from that which would obtain in an at-large system? A. The answer is not because in rural areas if you had many different towns and different newspaper publications, why, then the cost of campaigning could be reduced if you have a very large constituency, but when you get into a metropolitan area the candidate has to buy time on the radio, the TV and in the newspaper, and usually each of those media that I've named cover the whole community so that the candidate might be reduced in terms of cost of shoe leather but that's a relatively minor factor.

THE COURT: Doctor, you're speaking in general terms and not this particular area there, I assume. I mean this is a general principle. A. I am speaking in terms of general principles because I have not studied -

THE COURT: For example in a report here that was put in by a study committee for the county commissioners I believe they said that they recommended single-member districts and the basis of it was they said it would significantly reduce the cost of campaigning. You don't really agree or disagree with that statement because you don't have [19] that much information about it, I assume. Is that correct? A. As applied to Escambia County I do not have the information.

THE COURT: Yes, sir. All right.

Q. But you don't think it's necessarily true? A. As a

general principle I don't think it would apply to an area the size of Escambia County.

Q. Doctor, let me ask you again as a general principle, is single-member districting necessarily going to increase, work an increase in voter turnout, as opposed to that which would obtain in an at-large system? A. The answer is no. Single-member districts are, depend in that case, voter turnout depends on the quality of the candidates in each of the respective districts and the interest stirred up within that district. The voter is concentrating on the two or more candidates in his or her particular district and that, and really it can cut down on the total turnout because if the candidates are running at large then all the voters of the particular area, whether the city or the county, will listen to several candidates and there's more chance that, in an at-large system, that more of them will be interested and get to the polls.

Q. Okay. Now, Dr. Dauer, defendants have not asked you, have they, to do all the study necessary to form an opinion as to whether black voting strength in Pensacola [20] or Escambia County has been diluted? A. No. I have looked at some election returns but I have not studied the total delivery of services in this county and I have been speaking as to general principles.

Q. Right. So defendants asked you to tell the court what you as a political scientist think are the most important elements to consider in assessing whether or not that dilution exists? A. Yes.

Q. But if you were confronted with an opinion, Doctor, that dilution of black voting strength is established solely by the fact that black candidates have been defeated in at-large elections, would you agree or disagree?

THE COURT: I don't remember any such testimony in this case, Counselor.

MR. CARR: All right, Your Honor.

THE COURT: Do you? I don't recall any such testimony.

MR. CARR: Your Honor, we had a bit of argument about that. I recall the day.

THE COURT: If you want to ask him, you can say it. I do not recall the testimony. The testimony I recall, it's obviously consistent with the defeat that black candidates, I don't know, I assume Dr. Dauer would agree it's at least a factor, some evidence to be considered, when you get in the question of polarization, but it certainly is [21] not determinative. Would you agree with that, Doctor?

A. I agree with Your Honor's statement of it, exactly.

Q. Thank you, Your Honor. Dr. Dauer, that's all the questions I have. Lawyers for the plaintiffs may like to cross examine.

\* \* \* \* \*

[47] THE COURT: What does skewing mean, Doctor?

A. Skewing means that if the black vote is polarized and the white is not you can't generalize about the total electorate; you can only generalize about part of it. And skewing means that you're coming to a false conclusion.

THE COURT: Because you don't know about the white? A. Because you don't know about the white.

THE COURT: And you said what about it in these things? Did you say you found no skewing? A. I found that all of them were skewed because of the heavy vote in the black precincts and that that's a fault in regression analysis.

Q. Doctor, by heavy vote do you mean heavy in turnout? A. No, I mean the percent that is voting in that



[48] ward for the particular candidate; or precinct, excuse me, not ward.

Q. All right, sir. Now, doesn't the "r" square value by being very high tell us how well the line fits all of the dots on the scattergram? A. It tells you how the line fits the scatter diagram but it doesn't justify a conclusion of polarization. You can't move from the statistical evidence where only part of it is polarized to saying the total electorate is polarized.

Q. But the regression analysis looks at the entire electorate, doesn't it, Doctor? A. It looks -

Q. Gives you an "r" square for the entire electorate? A. Yes, you can have an "r" square but the "r" square doesn't prove anything except that this is factor number one in the entire operation. But I'm still saying that if, that in certain of those races where the white candidate got 51 percent or better in most of the white precincts, it still turned out that factor number one was black-white. But that does not conclude polarization. The black candidate in the city races was getting, was being elected.

Q. Now, Doctor, let me call your attention in [49] *Changing Politics of the South* to your table nineteen, which is labeled "Wallace Vote in 1968, Florida Counties in Multiple Correlation Stepwise Regression Analysis." A. Yes.

Q. Now, there the first step that you came out with was percent of income over fifteen thousand dollars and you had an "r" square of .7635. A. Yes.

Q. Now, what does that particular piece of information tell us about the appeal of George Wallace to the electorate? A. It tells you that there is a correlation with in-



come. But it doesn't say that, it doesn't go on to say that that is polarized.

Q. It indicates that there is a correlation, is that correct, sir? A. That is correct. But the conclusions you draw from correlations are not automatic. You have to use some judgment.

Q. All right, Doctor.

THE COURT: I think what you're telling me, even in these situations where you have here you thought it was insufficient there were some correlations shown by the election results and things, which means to my layman's mind, and you straighten me out, that there were indeed some whites voting [50] for white candidates as against black candidates because of racial considerations but that polarization means sufficient numbers of them voting for that reason to effectively prevent the black from having a chance of getting elected. A. To prevent the black from having any chance.

Q. Now, Doctor, I want to make sure we're talking about the same term here. You're not talking about dilution of the vote; you're talking about polarization of the vote, which means that they're polar opposites, isn't that correct? A. That would be correct.

Q. And you're saying that a regression analysis which comes out with an "r" square of .95 or above does not tell us that the vote is polarized along racial lines, that blacks are voting one way and whites are voting another way?

MR. CARR: Your Honor, I'm going to have to object to that. He's gone into this time and time again and the witness has testified time and time again the voting returns themselves and not statistical analysis gives you the total picture.

**THE COURT:** I'm going to let him ask the one more question. You are repeating yourself in cross. Go ahead. He used this time an "r" two factor of what? **A.** Point nine. I would have to know then as to, that would show, that might show that in the case of this [51] particular situation, if 90 percent are up in the top, well, let me start over. That would show that if in the black precincts the candidate was getting 95 percent and in the white precincts he was getting 55 and it all scaled neatly down in relation to the number of whites you still could get that out of a hundred-fourteen precincts ninety-five of them, 95 percent of them scaled most according to black-white. But that would not show that the white vote is polarized because in the example I've cited down in the white precincts the individual is still getting over 50 percent of the votes and so your white voters are giving a majority to the black candidate and you're still getting, but you're still having factor number one emerge as black-white. But it doesn't show polarization down at the other end.

**Q.** In that case -

**THE COURT:** Mr. Still, go ahead. We have about gone over this thing pretty thoroughly.

**Q.** Well, in that case the difference, the change in the vote would be what we would be measuring, wouldn't it, from the all-white precincts to the all-black precincts, and we would be explaining by the "r" square of .9 or .95 the difference in the vote, is that correct, Doctor? **A.** The difference in the vote from what?

**Q.** The difference in the vote between the all-black precincts and all-white precincts. **A.** No, when you're [52] using units and you're using the proportion of black-white registrants to votes and you're saying that the most powerful explanation here is that, black-white.

Q. All right, Doctor, did you in this analysis of George Wallace's vote in 1968, did you check to see whether there was any skewing there? A. Yes.

Q. You checked? Was there any skewing? A. The answer is no because it also showed a relationship with the lower income groups.

Q. All right, Doctor. Now, you mentioned that you utilized what you called the difference of means test and I believe in your deposition you talked about Blalock's book, *Social Statistics*. A. Yes.

Q. Is this the same difference of means test that is found in Blalock's book? A. Yes.

Q. This difference of means test, is this analysis you've been talking about here of the 40 percent as a cutoff? A. Yes. Now, the difference of means in Blalock's doesn't do the 40 percent. I mean you're using the Blalock formula and then you're using the Jewel and Patterson definition [53] of what is polarized and what is not.

Q. Doctor, with regard to whether or not single-member districts reduce the cost of campaigning in urban areas I believe you testified that it as a general rule does not because these candidates have all got to use the same TV stations and same newspapers that they used in at-large elections. Have you made any analysis to see whether or not there is any difference in the amount that is spent in Escambia County between people running for the County Commission and people running for the School Board, both of which are elected at large? A. No, I've made no analysis of Escambia County on those points. I was speaking as a general principle.

Q. Doctor you, I believe, in your deposition cited New, Verba and Petrocik's book, *The Changing*

*American Voter*, as being one which is well-recognized in the field, is that correct? A. That is correct.

Q. Would you agree with them when they speak of the polarizing issue of race as being an important factor in analyzing elections? A. As a possible factor, yes, that certainly you always have to take the ethnic vote into account and then see what the result is.

Q. And Bartley and Graham in *Southern Politics and the Second Reconstruction* [54] speak of the perverse persistence of race in politics in the South. Would you agree with them?

THE COURT: Speaks of the what, sir?

Q. Perverse persistence of race as a factor in politics. A. Fortunately I think it is decreasing and it depends on the area and the particular race as to that, but it always is one in Southern politics that we have to analyze.

THE COURT: Mr. Still, I don't know how much longer you think it will take but it's been going on a considerable period.

MR. STILL: Yes, sir. I've got about one or two more questions.

THE COURT: While you're looking them up or thinking about what you want to ask I'll ask him a question. Dr. Dauer, I have had two, we have had two experts testifying in this field respecting regression analysis and dilution and that kind of thing. They testified here last week. Have you had any opportunity to go over their testimony as they gave it here? A. Not in court. I did look at their regression figures and I did, I was supplied with their depositions, which, I add, were read to me, the point being that I'm developing cataracts and so it's inaccurate if I say I read [55] them, but I did have them. I had their depositions. But I have not heard their testimony.

THE COURT: Of course I haven't had the depositions. I heard the testimony. Let me ask you this point, this question, though. To what extent, if any, do you disagree with their findings or conclusions? A. All right. As to their use of regression analysis I think we've been discussing it.

THE COURT: I understand that one. A. That point. Another point, and I think that their definition of dilution does not include what I think is correct in political science, which is the total scope of the political process including registration and voting, whether the candidates campaign, whether they campaign on significant issues, and finally delivery of services. And in the last place I would put the issue of just black-white opposed elections because I think that from the standpoint of that group in the electorate the test of the pudding is not the election in a particular race. So I found their testimony leaning much too heavily just on the issue of black-white opposed races and not on the total political process.

THE COURT: All right, sir.

Q. Doctor, you've written an article or a monograph in 1953 in which you supported the use of at-large elections [56] for local communities in Florida, didn't you? A. Yes.

Q. So you've been on record for at least twenty-five years now supporting at-large elections, is that correct? A. At-large providing the districts are of reasonable size or there be a reasonable number of candidates for the voter to receive attention.

MR. STILL: Thank you very much, Doctor.

THE COURT: Redirect?

MR. CARR: Your Honor, I don't believe we have any questions.

## COLLOQUY BETWEEN THE COURT AND COUNSEL

[2058] MR. FLEMING: I'm uncertain to the degree to which we'll be able to stipulate but I will offer —

THE COURT: Well, all right.

MR. FLEMING: I will offer this much and see if Mr. Menefee is in agreement.

THE COURT: I suppose, does that have really much relevance here? We're talking about dilution of vote through, in effect, official action or inaction, nothing else. We can't cure all the racial ills under the guise of constitutional requirement.

MR. MENELEE: Judge, it has this relevance. The political system operates on a given social structure. Contacts for politicians, as ample testimony has developed here, are formed in any number of clubs, in any number of social institutions.

THE COURT: Well, it may have some relevance, carrying it pretty far. Anyhow, let's see what you have.

MR. FLEMING: I would suggest if the stipulation is required, I would suggest this, Your Honor. There's a significant racial segregation in private social, civic and religious organizations. However, this is due principally to voluntary decisions of the public and there is little to suggest that this segregation is due to the rules of the organizations or its members.

MR. MENELEE: Your Honor, we would certainly, the [2059] first sentence is fine. I think it's a matter of custom.

THE COURT: Beg pardon?

MR. MENELEE: We would suggest it's a matter of custom. We're not arguing any prohibitory rules.

THE COURT: Well, the rest of it, it is indeed a matter of custom and I would think people living in this area, undeniably there have been some times when we've had clubs or civic organizations or particularly social clubs who have not let black members join. You can't get away from that, Mr. Fleming.

MR. FLEMING: I don't know that, Your Honor.

THE COURT: Well, anybody over here would back that one up, I think. We've had social clubs that have kept out minority groups and we have it today. Anybody want to, anybody dispute that statement? I'll give you the Pensacola Country Club as an example.

MR. RAY: Never been there, Judge.

THE COURT: You're not a member of it? You're not a member of that club?

MR. RAY: No, sir.

THE COURT: Isn't that true? I happen to be a member of it. I've never seen a black whose a member of it. I have been told that club, for example, in times past and today will not let blacks be members of it and [2060] will not let Jews be members of it.

MR. LOTT: Your Honor, if that be the case, the fact of that being the case is obviously not in violation of any federal law.

THE COURT: I would agree with it. He's talking about what it is. Let's don't say that's true if you all don't know. I'm just having to speak from what I've been told and I'm just not out there very much. I'm not active in that club. I just happen to be a member of it, so I don't know whether it's true or not.

MR. FLEMING: Your Honor, I believe defendants



have nothing further to present. The defendants rest, Your Honor.

THE COURT: All right, on this stipulation we'd better get a lot of custom in it too. There's a lot that goes back. I think it's equally true there would be black organizations in this town in which we've got that kind of segregation too. We've got a lot of black churches with few, if any, white members. We've got black organizations which by custom otherwise don't have whites.

MR. MENEFEE: The stipulation was to cover both sides.

THE COURT: Let's leave it generally at that.

MR. FLEMING: I think the remarks on the record [2061] will suffice for the record.

THE COURT: Here I am putting stuff on the record and making stipulations for you. Anybody got objections to what I finally said there? We'll get away from that particular country club deal. Any argument about that being true in this area?

MR. RAY: Your Honor, I don't know if it's true.

THE COURT: Don't know what? Forget about the country club. I mean what I said about the black organizations. We have them and black churches and few, if any, whites in them, and white organizations and white churches and few, if any, blacks in them. Generally speaking, that's true in this community? Is that acceptable to all of you as a stipulation?

MR. MENEFEE: It is to us.

MR. LOTT: But not as a rule.

MR. CATON: With the qualifications Mr. Fleming had about custom.



THE COURT: It's been there by custom and there are some exceptions to it but it is generally in this area and community today.

MR. FLEMING: I think that's agreeable, Your Honor.

THE COURT: All right, what else do you want to get into now?

[2062] MR. FLEMING: Nothing, Your Honor.

THE COURT: Everybody announcing, you're announcing rest, all three of you?

MR. BLACKSHER: Mr. Shimek's testimony will take five minutes, Judge.

THE COURT: Let's get your rebuttal testimony right now.

MR. BLACKSHER: We'll call Mr. Paul Shimek. I'll get him, Judge.

MR. RAY: Your Honor, before Mr. Shimek testifies I would like to state that my understanding of the problem with this exhibit was that it wasn't the complete exhibit and therefore the defendants or the plaintiffs were afforded an opportunity to bring the complete exhibit to court to make it a full exhibit. I don't know what testimony Mr. Shimek could offer in that regard.

THE COURT: I think he's caught short here and he's going to have Mr. Shimek testify from personal recollection and maybe come into it. I think he's had that problem, Mr. Ray. I don't know. We'll let him come forward and see. Mr. Ray. I am not inclined to be too technical. If he's got other evidence in that thing that goes beyond what you did it seems to me we ought to get it here.

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